142—450

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TRANSCRIPT OF RECORD.

RECORD, CASE NO. 14506.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO., 1048.

JOHN BOYD AND EUGENE STANDLEY, ALIAS EUGENE STANTON, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED FEBRUARY 28, 1891.

LAW ASSOCIATION OF PHILADELPHIA

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1 In the United States court of the western district of Arkansas.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANLY. } Murder.

I, Eugene Stanly, one of the defendants in the above-stated cause, do solemnly swear that I am not possessed of sufficient means, and am not worth $10.00 above my wearing apparel, and am unable to procure the same, so as to prosecute the appeal taken in said cause in the Supreme Court of the United States. I therefore pray that it be prosecuted in forma pauperis.

EUGENE STANDLEY.

Sworn to and subscribed before me the 14th day of Feb'y, 1891.

STEPHEN WHEELER,
Clerk.
By W. B. POPE, *D. C.*

2 (Indorsed:) United States vs. John Boyd et al. S. Murder. Affidavit.

3 In the United States court for the western district of Arkansas.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANLY. } Murder.

I, John Boyd, one of the defendants in the above-stated cause, do solemnly swear that I am not possessed of sufficient means, and am not worth more than $10 above my wearing apparel, and am unable to procure the same so as to prosecute the appeal taken in said cause in the Supreme Court of the United States. I therefore pray that it be prosecuted in forma pauperis.

JOHN BOYD.

Sworn to and subscribed before me the 14th day of Feb'y, 1891.

STEPHEN WHEELER,
Clerk.
By W. B. POPE, *D. C.*

4 (Indorsed:) United States vs. John Boyd et al. B. Murder. Affidavit.

5 UNITED STATES OF AMERICA,
Western district of Arkansas:

I hereby state that from information obtained at the trial of Eugene Standley and John Boyd before me for murder, and from a general knowledge of their pecuniary condition, I am fully satisfied they are poor persons, without any property whatever, and wholly unable to pay any costs growing out of the prosecution of their case in the Supreme Court of the United States.

Given under my hand this 18th day of February, A. D. 1891.

I. C. PARKER,
U. S. District Judge.

6 In the circuit court of the United States for the western district of Arkansas. February term, A. D. 1891.

THE UNITED STATES, PLAINTIFF,
vs.
JOHN BOYD AND EUGENE STANDLEY, ALIAS Eugene Stanton, defendants. } Murder.

To the clerk of the circuit court of the United States for the western district of Arkansas:

Your petitioner respectfully represents that at the November term, A. D. 1890, of this said court he was convicted on an indictment charging him with the crime of murder, and that the said court has pronounced judgment and sentence of death upon this petitioner on the verdict of the jury convicting him as aforesaid; your petitioner alleges that in the record and proceedings in the trial in said cause there is great and manifest error, to the prejudice and great damage of your petitioner.

He therefore prays that a writ of error from the Supreme Court of the United States be issued by you under the seal of said circuit court in said cause, removing said cause and the record therein to the said Supreme Court in order that the same may be there examined, and if error be found that the judgment and sentence against him therein may be reversed.

EUGENE STANDLEY,
alias EUGENE STANTON,
By GEORGE A. GRACE,
His Attorney.

7 In the United States circuit court for the western district of Arkansas. February term, A. D. 1891.

THE UNITED STATES
vs.
JOHN BOYD AND EUGENE STANDLEY, alias Eugene Stanton.

To the clerk of the circuit court of the United States for the western district of Arkansas:

Your petitioner respectfully represents that at the November term, 1890, of said court he was convicted on an indictment charging him with the crime of murder, and that the judge of said court has pronounced judgment and sentence of death upon your petitioner on the verdict of the jury convicting him as aforesaid.

Your petitioner alleges that in the record and proceedings in the trial in said cause there is great and manifest error, to the prejudice and great damage of your petitioner.

He therefore prays that a writ of error to the Supreme Court of the United States be issued by you under the seal of said court in said cause and the record therein to the said Supreme Court in order that the same may be there examined, and if error be found that the judgment and sentence against him therein may be reversed and a new trial granted him.

Petitioner also further prays that the assignment of errors filed in the above entitled cause by his co-defendant Standley be considered as his as fully as if the same had been seperately filed by him.

JOHN BOYD,
By N. L. MARMON,
His Attorney.

8 In the the circuit court of the United States for the western district of Arkanses. February term, A. D. 1891.

THE UNITED STATES, PL.,
vs.
JOHN BOYD & EUGENE STANDLEY, alias Eugene Stanton, dfs. } Murder.

The defendants in the above entitled cause, Eugene Standley, alias Eugene Stanton, filed this his assignment of *of* errors committed on the trial of said cause, to wit:

1. It was error to admit the testimony of Martin Byrd, the principle witness for the prosecution, on the pardon offered, to enable him to testify in a case at "Little Rock." The record showed that the witness had been convicted and sent to the penitentiary for larceny. The pardon recited that he was an important witness in a murder case at "Little Rock."

2. It was error to admit the testimony of W. B. Pape as to the handwriting of defendant Standley, also error to allow Mr. Pape to examine and compare the writing on the face of the orders and the letter marked "D" to identify or aid in identifying the handwriting of the said letter, and error to admit said letter "D" in evidence; said witness had shown no qualifications as an expert; and there was no evidence that the orders had come from defendant Standley or been recognized or admitted by him as genuine, or were known by him to be in existence. They were not evidence to prove any other fact in the case, and were sworn to by the witness, and the substance of their contents explained by him to the jury, but the orders were not read to the jury. Pape testified that the papers were orders, that he had paid money on them, that they were in defendant Standley's handwriting. Said Pape further testified that he had never seen the defendant write; that he had occasion frequently to see the defendant Standley's handwrite.

9 3. It was error to admit the testimony of F. M. Rigsby as to the robbery of his store on April the 5th, and especially to admit the details of said robbery.

Said witness testified that his store at Dora, in Crawford County, Arkansas, was robbed by three men about dusk on April 5th last; that defendants Standley and Boyd and Myers were the men who did it; that he came to his store about three o'clock and Davis was sitting on the porch on a box. A little before sundown Boyd and Standley come and called for something to eat. "My son gave them some oysters and peaches and Boyd stepped up to pay for them and handed me a $5 bill; I gave him the change, taking out 65 cents for the things they ate. Boyd put up the money in his pocketbook very carefully and put the book in his pocket and stepped back. Standley drew his pistol and said, "Give up the rest

of that." I said, "What does that mean?" and I heard something click. Davis had got up in the door and had his gun pointed towards me, and said, "Oh, you know what this means; just hand it over. We do not want to hurt you." "I said, boys, are you going to go through me?" He said, "Certainly, that is our business." I gave them the nickles and dimes in the drawer, and Standley reached over and took out a bill or two and some silver that was in the inner drawer. There was another man in there. Boyd marched him around behind the counter. Boyd had his pistol out. They sent Standley round behind the counter to search us. He searched me for weapons and took a twenty-dollar gold piece out of old man Anderson's pocket, and then went to ransacking for other things, which they packed up, some in a shirt and some in pants. They asked me if I had a pistol, but I denied having one, and Davis told Standley to go round and search, which he did, and got a pistol, which he gave
10 to Davis. I have since got the pistol back. That is the one Standley stole from me. My boy came in with a gun on his shoulder. They took it and told the boy to march around behind the counter. I have since got the same gun back. They took the coat and vest (now shown me) from me there. "Were these clothes on you?" asked the district att'y for the prosecution. "Yes, sir." Question. "Tell us about that." Witness said in reply that Standley come up and wanted his watch, and it had a leather guard on it, and he wanted me to show him how to get it off, which I would not do. Davis said, "Damn it, break it," and he broke it off and took the watch. This is the same watch. Davis said, "You are getting too damned many in there." Seven or eight people had come in there to trade and they had marched them in behind the counter. Davis said, "Hurry up, boys, let's go." As they got ready to go Davis said, "Well, give me that coat and vest." I said, "Leave me my coat and vest," and he said, "By God, I want it, too; you are able to get more; I have to work for my living; pull it off." He said, "I want it to wear." I afterward saw these clothes on Davis after he was killed. These are the men who were there. Standley was very nervous; he had his pistol on me, and I was afraid accidentally he would shoot me. The other two were very cool. The pistol was cocked part of the time. I was not acquainted with Boyd.

The witness also gave the value of the different articles taken.

4. It was error to admit the documents and rolls produced by Jacob P. Jackson, the national secretary of the Choctaw Nation.

He testified that said documents were not marked as filed in the
11 office; that though one of them was understood to be a copy of the list of citizens on file in the Interior Department at Washington, they were not certified copies. That he had found these papers in his office on assuming the duties of national secretary.

5. It was error to admit the testimony of T. D. Ainsworth in regard to registration of said John Dansby and in regard to the lists of registration.

He testified that he was one of the commissioners of registration to register freedmen, and that the name of John Dansby appeared on the roll as one who had elected to leave the nation, but he did not know whether he had received the $100 or not; that the name was not in Dansby's

handwriting, but in that of the clerk of the board; that it was not necessary for Dansby to sign any papers; that he ascertained his wishes by asking him, and the clerk wrote his name by his directions in the book.

6. It was error to exclude the testimony of James Magbee as to the statements of Richard Butler. It was proved that Magbee lived a mile or a mile and a half from the ferry at Martin Byrd's; that Richard Butler came to his house on Sunday night, the same night of the killing, about half after 9 o'clock at night, and borrowed his Winchester rifle, and that immediately after the firing at the ferry said witness went down to the ferry and to Byrd's and found said Richard Butler there, and the gun also. It was proved by other evidence that said Richard Butler had been at the ferry all day on Sunday and was staying all night there at Byrd's on Sunday night, although he lived only a half mile from there on Byrd's place; that after borrowing the gun he returned to the ferry and there engaged in the shooting in which said Dansby was killed; that said Richard Butler participated in the shooting, coöperating with said
12 Martin Byrd against the defendants, and that it was he who shot John Boyd, one of the defendants.

The defendants then offered to prove by said James Magbee that said Richard Butler said at the time he borrowed said Magbee's gun, as above stated, that there were some men down to the creek, at the rock ford, where they keep the ferry, and he thought it was them robbers; that that was what he wanted the gun for, and what he and the men with him were going to do with the men at the ferry—the robbers.

7. It was error to admit the testimony adduced on cross-examination of defendant Standley by the counsel for the Government as to the robbery of John Taylor, and especially the details of said robbery.

The substance of said testimony is the same as that stated under the next (8th) assignment of error.

8. It was error to admit the testimony of John Taylor on cross-examination by the Government in regard to an alleged robbery of said witness by defendant Standley; and it was also error to admit the details of said robbery even though the fact of the robbery itself had been admissible.

Said testimony was in substance as follows:

Standley come to my place a little before dark and told me his name was John Haynes and he was hunting work. I hired him at 50 cents a day. My wife and hired girl were at the lot and went in to get his supper. At bedtime, my brother-in-law told Standley where to sleep, and come into the room where I was. I had pulled off my coat and vest to go to bed when the door flew open and Standley come in with a 6-shooter and another fellow with a Winchester rifle. He said, "Throw up," and
13 I said, "What is it?" He said "Set down." My wife looked up and said, "Set down, Mr. Taylor." The girl had gone to bed; he had her get up and come in. She put on her clothes and come in. Four of us besides them. He asked for some ropes and I told him to go to the barn; then he inquired for a handkerchief, which I told him was in my pocket. He tied my hands with it. I said, "I know what you want; I guess you want our money; you can get that out of my pocket." He said, "How much you got?" I said, "About $100. He said, "O, hell, that won't sort o' do, You have got more than that. We are going to

have it." He got $127 out of my pocket. He took the pocketbook and money, a gun, and my wife's watch; he got the watch out of the wardrobe. Davis all this time was standing in the door with a Winchester. They also took a pistol, 4 pocket-knives, a razor and brush and other things. They left about 10 o'clock. They told me not to go out of the house that night. While Standley was hunting for money he said I had more money than that—lots of it. He said, "You have heard talk about burning men's feet and hanging them," and asked me how I would like that. I told him pretty bad, but he wouldn't find any more money. He said if he did it wouldn't be good for me.

9. It was error to admit the testimony of Samuel R. Mode in regard to the alleged robbery by defendant Standley of one Richard C. Brinson and also of himself; it was also error to admit the details of said two robberies.

Said testimony is in substance as follows:

I was present when Brinson was robbed and Standley was the man who did it. I lived there. Standley stood around and talked some. He then went out at the door; then came back and went behind the door and picked up a shotgun and threw it down on us, and then this
14 other fellow was in the door, and he threw a pistol on us and told us to get in the corner; and mother-in-law was in the other room where my wife was at; she was crying; he kept ordering us around and asking where the money was at; and mother-in-law told him in the trunk where I was sitting. He told me to get the trunk out. He unlocked it and took the money out—I had $10 in it and the old lady had some. He got through with that trunk and reached under the bed and got another trunk out which had old man Brinson's money it it. He took it. I don't know how much there was of it. That was in March, in the Choctaw Nation.

10. It was error to admit the testimony of Richard C. Brinson as to a robbery of himself and one Samuel R. Mode by defendant Standley.

He said: They got $100 from me and about $60 from the house; some from my wife and some from Sam Mode. The balance of his testimony is in substance the same as Mode's in the last (9th) assignment.

11. It was error to admit the testimony of Robert Hall as to a robbery of himself by defendants; and also error to admit the details thereof.

Said Hall testified in substance that Standley and, he thinks, Boyd, come to where we had a store in March 17th last. I was just about to lock up the store to go to supper when these two men came. Standley said, "I reckon we will have to eat supper with you." He asked for some sardines. I walked behind the counter to get them. When I turned my back to get them he cocked his pistol on me and said, "Hold up your hands." He stood with the pistol cocked on me; then the other
15 man, that I think is Boyd, came round and asked where the money was. I told him in the drawer. He took it, $40 to $50. I had $20 in my vest pocket. Boyd took that out; also got a Winchester gun and pistol. They took a lot of things from the store; two pairs of pants, two pairs of overalls, and some shirts and a pair of shoes. They got me to tie the legs of the overalls and put the goods in them. They took some sardines and crackers, and such things, also. That was at Wilburton, in the Choctaw Nation.

12. It was error to omit the charge of the jury on the subject of manslaughter, and also of the law of self-defense and of homicide in resistance to an illegal arrest.

Such omissions will appear from the charge set out in full in the bill of exceptions.

13. It was error to overrule the motions for a new trial and in arrest of judgment, and to sentence the defendants.

Wherefore, the above stated errors considered, the said defendant prays that the judgment and sentence against him be reversed.

EUGENE STANDLEY,
By GEO. A. GRACE,
His attorney.

16 UNITED STATES OF AMERICA, *ss.:*

The President of the United States to the honorable judge of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The United States as plaintiff and John Boyd as defendant, a manifest error hath happened, to the great damage of the said John Boyd, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of March next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 20 day of February, in the year of our Lord one thousand eight hundred and nin'ty one.

[SEAL.] STEPHEN WHEELER,
Clerk of the Ct. Court of the United States, West. Dis. Ark.

Allowed by—
H. PARKER,
U. S. Dst. Judge holding Circuit Court.

17 UNITED STATES OF AMERICA, *ss.:*

The President of the United States to the honorable judge of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The United States as plaintiff and Eugene Standley, alias Eugene Stanton, as defendant, a manifest error hath happened, to the

great damage of the said Eugene Standley, alias Eugene Stanton, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of March next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, chief justice of the said Supreme Court, the 20th day of February, in the year of our Lord one thousand eight hundred and nin'ty-one.

[SEAL.] STEPHEN WHEELER,
Clerk of the Ct. Court of the United States, West. Dist., Ark.

Allowed by—
I. C. PARKER,
U. S. Dist. Judge holding Circuit Court.

18 UNITED STATES OF AMERICA, *ss.*

To Wm. H. H. Clayton, esq., U. S. attorney for the western dist. of Ark., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in March next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and the western district of Arkansas, wherein Eugene Standley, alias Eugene Stanton, is plaintiff and you are defendant, in error, to show cause, if any there be, why judgment, in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 20th day of February, A. D. 1891.

[SEAL.] STEPHEN WHEELER,
U. S. Circuit Clerk for the Western Dist., Ark.

I hereby accept service of the within citation this 21st day of February, A. D. 1891.

WM. H. H. CLAYTON,
U. S. Attorney for the Western District of Ark.

19 UNITED STATES OF AMERICA, *ss.*

To Wm. H. H. Clayton, esq., U. S. attorney for the western dist. of Arkansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in March next, pursuant to a writ of error filed in the clerk's office

of the circuit court of the United States for the eighth circuit and the western district of Arkansas, wherein John Boyd is plaintiff and you are defendant, in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 20th day of February, A. D. 1891.

[SEAL.] STEPHEN WHEELER,
U. S. Circuit Clerk for Western Dist., Ark.

I hereby accept service of the within citation this 21 day of February, A. D. 1891.

WM. H. H. CLAYTON,
United States Attorney for the Western Dist., Ark.

20 UNITED STATES OF AMERICA,
Western District of Arkansas:

In the circuit court, May term, A. D. 1890.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANDLEY, ALIAS EUGENE STANTON. } Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn and charged, to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present: That John Boyd and Eugene Standley, alias Eugene Stanton, on the 6th day of April, A. D. 1890, at the Choctaw Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one John Dansby, a negro and not an Indian, then and there being, feloniously, willfully, and of their malice aforethought, did make an assault; and that the said John Boyd and Eugene Standley, alias Eugene Stanton, with a certain gun then and there charged with gunpowder and one leaden bullet, which said gun, they, the said John Boyd and Eugene Standley, alias Eugene Stanton, in their hands then and there had and held, then and there feloniously, willfully, and of their malice aforethought, did discharge and shoot off, to, against and upon the said John Dansby, and that the said John Boyd and Eugene Standley, alias Eugene Stanton, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said John Boyd and Eugene Standley, alias Eugene Stanton, discharged and shot off as aforesaid, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate and wound him, the said John Dansby, in and upon the left side of the back of him the said John Dansby, giving to him the said John Dansby then and there, with the leaden bullet aforesaid, so as
21 aforesaid discharged and shot out of the gun aforesaid by the said John Boyd and Eugene Standley alias Eugene Stanton in and upon the left side of the back of him the said John Dansby one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound, he the said John Dansby then and there instantly died. And

so the jurors aforesaid, upon their oath aforesaid, do say that the said John Boyd and Eugene Standley, alias Eugene Stanton, him the said John Dansby in the manner and by the means aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

_____, _____,

United States Attorney, Western District of Arkansas.

22 UNITED STATES } Murder.
vs.
2ND COUNT. }

The grand jurors of the United States of America, duly selected, empaneled, sworn and charged, to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That John Boyd and Eugene Standley, alias Eugene Stanton, white men and not Indians, on the 6th day of April, A. D. 1890, at the Choctaw Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one John Dansby, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said John Boyd and Eugene Standley, alias Eugene Stanton, with a certain gun, then and there charged with gunpowder and one leaden bullet, which said gun they, the said John Boyd and Eugene Standley, alias Eugene Stanton, in their hands then and there had and held, then and there feloniously, wilfully, and of their malice aforethought, did discharge and shoot off to, against, and upon the said John Dansby, and that the said John Boyd and Eugene Standley, alias Eugene Stanton, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said John Boyd and Eugene Standley, alias Eugene Stanton, discharged and shot off as aforesaid, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate, and wound him, the said John Dansby, in and upon the left side of the back of him, the said John Dansby, giving to him, the said John Dansby, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of
23 the gun aforesaid by the said John Boyd and Eugene Standley, alias Eugene Stanton, in and upon the left side of the back of him the said John Dansby, one mortal wound of the depth of four inches and of the breadth of half an inch, of which said mortal wound, he, the said John Dansby, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Boyd and Eugene Standley, alias Eugene Stanton, he, the said John Dansby, in the manner and by the means aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

WM. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

(Indorsed:) No. 9. United States vs. John Boyd and Eugene Standley. Murder. A true bill. Frank Parke, foreman. Witnesses: Martin

Byrd, I., Joseph Byrd, I., John Taylor, I., Dr. R. W. Foyle, T. D Ainsworth, Simon Dansby, Paden Tolbert, Jacob Jackson, Jeff Campbell, Wm. B. Pape. Filed July 2nd, 1890. S. Wheeler, clerk.

24 In the circuit court of the United States for the western district of Arkansas. February term, A. D. 1891.

THE UNITED STATES, Pl.,
vs.
JOHN BOYD AND EUGENE STANDLEY, alias Eugene Stanton, Dfs. } Murder.

Be it remembered that on the trial of the above-entitled cause the United States, to maintain the issues on its part, produced and examined the following witnesses, to wit: Martin Byrd, Dr. W. R. Foyl, Joseph Byrd, William Mickle, Paden Tolbert, S. A. Williams, F. M. Rigsby, Jacob Jackson, T. D. Ainsworth, Simon Dansby, and Wm. B. Pape, who testified, respectively, as follows:

25 In the circuit court of the United States, within and for the western district of Arkansas. August term, 1890.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANLEY, alias Eugene Stanton. } Murder.

Testimony before his honor, Isaac C. Parker, and a jury.

Appearances.

For the Government: W. H. H. Clayton, U. S. dist. atty., and Edward J. Fannin, asst. U. S. dist. atty.

For the defendants: Hon. N. L. Marmon, for deft. Boyd, and Hon. Geo. A. Grace and Hon. J. C. Byers, for deft. Stanley.

Trial held at Fort Smith, Arkansas, commencing October 24th, 1890, at 10.10 o'clock a. m.

26 (Copy.)

MARTIN BYRD.

Col. CLAYTON. What is your name?

A. Martin Byrd.

Mr. GRACE (att'y for defendant Stanley). Have you ever been convicted here in this court?

A. That's right.

Q. What of?

A. Larceny.

The COURT. Do you object to him on that ground?

Mr. GRACE. Yes, sir.

The COURT. Get your record.

(The clerk here produced a record of the court.)

The COURT (to clerk). What does it show?

The CLERK. It shows conviction on the tenth day of May, 1884, for larceny.

The COURT. The sentence?

The CLERK. No, sir; not the sentence; the verdict.

The COURT. You want the judgment; that is what is required.

(The clerk here produced another record.)

The COURT (to clerk). What does the record show?

The CLERK. It shows on the 19th day of May, 1884, he was sentenced to the House of Correction at Detroit, Michigan, for one year.

The COURT (to attorneys). Well, of course that is a record of conviction of larceny. Do you urge it, gentlemen?

Mr. MARMON (att'y for defendant Boyd). Yes, sir.

Col. CLAYTON (to witness). What is your name?

A. Martin Byrd.

27 Q. Please look at that paper and see if that has been delivered into your hands [handing witness a paper].

A. Yes, sir.

Col. CLAYTON. I offer, if your honor please, a pardon.

Mr. MARMON. If the court please, we object to this. It appears from reading it that it is a pardon granted for the special purpose of allowing this man to testify in this murder case. It says, also, for the purpose of allowing him to testify in a case at Little Rock.

The COURT. The pardon is general. That part about "Little Rock" is evidently a clerical error. This pardon restores him; he may testify.

Mr. MARMON. We enter our objection to his testifying.

Col. CLAYTON. Of course, this pardon is only submitted to the court. The gentleman will have no right to refer to it hereafter—the reasons for granting it can not be commented on by the attorneys.

Q. Your name is Martin Byrd?

A. Yes, sir.

Q. Where do you live?

A. I live in Scullyville County, Choctaw Nation—Cache, rather.

Mr. MARMON. Were you ever convicted any other time for larceny?

A. No, sir.

Q. You were charged with it again?

A. No, sir; only once.

Col. CLAYTON. Never mind asking that question.

Mr. MARMON (to witness). Your are a citizen of the nation?

A. Yes, sir.

Q. Were you ever convicted there for larceny?

A. No, sir.

28 Col. CLAYTON (to witness). Your name is Martin Byrd?

A. Yes, sir.

Q. Where do you live?

A. I live in Scullyville County.

Q. What part of Scullyville County?

A. Choctaw Nation.

Q. You are getting further away instead of nearer to. What part of Scullyville County did you live?

A. In Cache bottom.
Q. Do you know these defendants, John Boyd and Eugene Stanley?
A. Yes, sir; I knowed John Boyd for two years.
Q. Did you know Stanley here?
A. I didn't know him only at that time. As soon as he was arrested and brought here in July then I went and identified him.
Q. He was a stranger to you at the time of the killing of John Dansby?
A. Yes, sir.
Q. These two men are charged with the murder of John Dansby in the Choctaw Nation; did you know him?
A. Yes, sir.
Q. What was he?
A. He was a non-citizen.
Q. Was he a white man or a colored man?
A. He was a colored man.
Q. A non-citizen you say?
A. Yes, sir.
Q. Is he alive or dead?
A. He is dead.
Q. Were you present upon the night he was shot.
A. Yes, sir.
Q. Where was it?
A. It was there at my house.
Q. What was your business at that time?
A. Well, I was there in bed.
Q. No, no; what was you doing for a living?
A. I was running a ferry.
Q. Across what stream?
A. Cache.
29 Q. Now then, I will get you to state first when it was that this thing occurred?
A. It was the 6th day of April.
Q. Last April?
A. Yes, sir.
Q. About how far do you live from your ferry?
A. About 100 yards.
Q. The ferry is a ferry across Cache?
A. Yes, sir.
Q. On which side of the stream do you live?
A. Well, I live on the west side of Cache.
Q. Now, then, I will ask you if you were present at the time that John Dansby was shot?
A. Yes, sir; I was present.
Q. You may state how you came to be present.
A. Well, it was this way; it was about 10 or 11 o'clock in the night that some one hollered down at the ferry——
Q. Hold on, before you get to that. Who was there with you?
A. There was John Dansby, and Joe Byrd, and Richard Butler.
Q. Joseph Byrd is your brother?
A. Yes, sir.

Q. How came Dansby to be at your house?

A. I was going off next morning, and I notified Dansby to come down, being as he didn't have anything to do on Sunday—to come down and run it for me early next morning.

Q. Monday morning?

A. Yes, sir.

Q. How came Butler at your place?

A. He lived on my place, and not far from it.

Q. How far did he live from you?

A. I reckon about half a mile.

Q. On your place?

A. Yes, sir.

30 Q. Was he a renter on your place?

A. Yes, sir.

Q. Was Butler at your house that night?

A. Yes, sir.

Q. What was he doing there?

A. He staid all night with me Sunday night.

Q. You started, a minute ago, to tell something about what occurred about 10 or 11 o'clock at night; what was it?

A. Well, we was all in bed; some one hollered down at the ferry, and I answered in the house; but I don't reckon they heard me; they kept hollering. I got up and went out of doors to see what direction it was, and it was right across the slough—it would be east from my house down to the ferry.

Q. At the ferry?

A. Yes, sir; and they said they wanted across. I just went back in the house and waked the boys up.

Q. You went out there first and had this talk with them; what did you say to them when you went out?

A. They just told me their business. They said they wanted across.

Q. How far were you from them?

A. I don't know, sir; it must have been 200 yards; no, it was about 100 yards from the house to the boat.

Q. Were they at the boat?

A. No, sir; they were across the slough.

Q. The slough is on the same side of the cache your house is?

A. Yes, sir.

Q. They were down the cache and across the slough?

A. Yes, sir.

Q. They told you they wanted across?

A. Yes, sir.

Q. You then went into the house and awoke the other boys, I understood you to say?

A. Yes, sir.

31 Q. Go on and state what occurred after that?

A. When I woke up the boys they put on their clothes and went out with me.

Q. Did you arm yourself?

A. Yes, sir; I put a pistol on and my brother taken my Winchester.

Q. Your brother Joseph?

A. Yes, sir; he taken the Winchester and John Dansby taken his Winchester.

Q. He had a Winchester?

A. Yes, sir; he had a Winchester of his own.

Q. Did Butler have anything?

A. No, sir; didn't have anything at all.

Q. Go on and state what you did.

A. Went on down to the boat, and we met John Boyd there, and Stanley, and John Myers.

Q. Had he any other name?

A. Well, Mr. Boyd told me he went by the name of John Davis.

Q. These other men were there?

A. Yes, sir.

Q. Were they at the boat when you got there, or at the slough?

A. They were just about as far as from here to the wall out across the slough, and came into the boat together; we all met at the same time.

Q. They had came across the slough—came in on the same side your ferry was?

A. Yes, sir.

Q. The boat was on the same side of the river you were?

A. Yes, sir.

Q. You say you got there about the same time?

A. Yes, sir.

Q. When you got there please state if you observed any arms on them?

32 A. When they came to the boat my remark was this: I said, "I don't like to cross everybody at night," and I didn't follow it. Davis said, "You needn't be uneasy. We haven't got but the one gun; we don't want to hurt you at all." That was Davis, and the one that went by the name of John Myers.

Q. I asked you if they had any arms.

A. I hadn't seen any arms yet, until Stanley walks up to Davis and takes his breech-loader shotgun out of his hands and goes and puts it on the far end of the boat. Davis walked right up to me, and said: "We haven't got but the one gun." He said: "If we wanted to kill you we would have a dozen like this." And Stanley walked up and took the gun out of his hands and put it about the middle of the boat, and when he does that he comes right off again, walked right by me; I paid strict attention to him; I seed he had no horse to put on the boat; he came off and went by and up to where Joe Byrd and John Dansby were; they were on the bank. I was standing there at the first edge of the boat with the chain in my hand, the chain that is hitched to the boat to lock it to the tree. Richard Butler was on the boat. Davis said "Hurry up and unlock that boat." I said "all right" and I run my hand in my pocket to get out the key. Just as I was guarding the key right in the key-hole, Davis had his left thigh to me——

Q. That was Davis, or John Myers?

A. Yes, sir.

Q. They were the same person?

A. Yes, sir. He had his left thigh to me, still watching these parties up yonder. About the time I got the key right in the lock he said:

"Throw down that chain." When I looked up at him he had his pistol out. I said, "Don't you want to cross?" He said: "Hell, no; that ain't what I am after." I said, "What did you call me down here
33 for?" He said, "This is an old thing; you go down into your pocket and get out that rusty change," He said: "It is money I am after." I said, "I haven't got any money." He said: "O, well, it don't make any difference; there has been better men than you robbed." He said: "Give out that money." I said, "I haven't any." About that time Joe Byrd and John Dansby started this direction towards me.

Q. Started from up on the hill towards you?

A. Yes, sir; right towards me. There was a pistol fired back there, right from John Boyd. John Boyd had shot John Dansby right centerin' the back, and John hollered; and Davis he fired, and after Davis shot——

Q. Davis shot?

A. Yes, sir.

Q. Who did he fire at?

A. At me.

Q. Did he hit you?

A. No, sir; he had his pistol in his hands that way, and he was kind of looking back at the other boys, and as he raised the pistol up I fell right under him, and he fired and didn't hit me, and I reached back for my pistol as quick as I could and I shot him right in the center of the head; I run up on the hill and fired right back at him.

Q. That was two?

A. Yes, sir. And Eugene Stanley, my brother had shot him down, and he was running down there, and I heard John Boyd's voice, I knowed his voice, he commenced hollering——

Q. What made him holler?

A. Richard Butler shot him. After the shooting commenced
34 Butler jerks up John Boyd's shotgun and shot John Boyd with it—I don't know whose gun it was; they had it.

Q. That was what made him holler?

A. Yes, sir. After he hollered I identified his voice. I said, "That is John Boyd."

Q. What did you do?

A. I run after him. He kept shooting. I run him in the creek; after he got in the creek he swam across and got up against a kind of a slick rock cliff, and he couldn't crawl out; I threw my pistol down on him and said, "If you move I will kill you; you stay there." He said, "Martin, I am sorry I done this, but after it started I don't give a damn." I said, "I don't either." I said, "You stay there," and he said, "All right, I will stay here," and he staid right on the bank over there, and I hollered to the boys to bring the boat down there; it was up instead of down. They carried the boat up the river—anyway, up the stream. When the boys brought the boat I said, "Bring it right up here so I can get on." I got on the boat. Well, I went up there and got John Boyd, and he had shot all the loads out of his pistol and laid it right down by the rock there, right by him, and the other pistol was in the creek.

Q. How do you know that?

A. He told it; that it was in the creek. As soon as I put my hand on his pistol that was laying on the bank he says, "Martin, where did I hit John Dansby at?" I said, "In the back." "Well," he said, "I aimed to break his back."

Q. What did you do with him?

A. Put him on the boat.

Q. Did he say anything else to you at that time?

A. O, well, he said this, he 'lowed "That ain't the first man I
35 have killed." I don't remember how many he said this made.

Q. What did you do with him then?

A. Put him on the boat and took him up to our house.

Q. What had become of Dansby in the meantime?

A. Dansby was in my house; they had carried him up to the house.

Q. Did you stay there, hold him there; did you stay there when he was across the creek until they took Dansby to the house and came back again?

A. When I got my boat and put him on the boat Dansby was at the house.

Q. They had carried him there?

A. Yes, sir.

Q. Do you know who carried him there?

A. Richard and my brother, I guess, they took him there.

Q. Where was Davis, the man you shot?

A. He couldn't move.

Q. Did he fall on the boat?

A. No, sir; right on the ground; he was dead.

Q. Where did you shoot him?

A. Right in the forehead.

Q. You shot him twice, did you?

A. Yes, sir.

Q. Where was the other shot?

A. Right center in the right eye.

Q. One in the eye, the other in the forehead?

A. Yes, sir.

Q. What became of Eugene Stanley?

A. Richard said that Eugene Stanley——

Q. Never mind that. When you went following this man by the flash of his pistol where was Eugene?

A. Eugene Stanley was laying down——

Mr. GRACE. Do not tell anything but what you saw.

36 Col. CLAYTON. Did you see him laying there?

A. Yes, sir.

Q. When you came back, where was he?

A. He had gone; Davis's pistol was gone, too.

Q. What became of Joe, your brother?

A. John Boyd was hollering so that Joe Byrd went off up there, and thought I had got shot, and he left Eugene Stanley and came up there.

Q. Joe Byrd had thought that he had killed Stanley?

A. Yes, sir. When he came down to me Eugene Stanley ran up the river.

Q. When you got this man, what did you do with him?

A. Put him on the boat and took him to the house, made a pallet for him, and put him on the gallery.

Q. Did you send for a doctor?

A. I didn't send at all; I saddled up and went myself.

Q. Who did you go to get?

A. The first man I struck was Doctor Foyle.

Q. He is here?

A. Yes, sir.

Q. How far does he live from you?

A. About 7 miles.

Q. You went and got him and brought him back there?

A. Yes, sir; also notified several people that night.

Q. He is a white man, the doctor?

A. Yes, sir.

Q. Please state what time (about) the doctor got there.

A. I got to the doctor's house. I didn't get home until morning, but I am satisfied it was about 12 o'clock when I got to the doctor's house.

Q. Why didn't you go home until morning—where were you?

37 A. I was notifying people to come up there.

Q. You went around telling people about it.

A. Yes, sir; it was about daybreak when I got home.

Q. Where was Dansby shot?

A. Shot in the back. It didn't hit his backbone at all; it didn't miss it far, I am satisfied; I looked at the wound myself.

Q. Do you know where the ball came out?

A. It didn't come out at all; it lodged.

Q. What was the first shot that was fired?

A. John Boyd fired the first shot, second was Davis, third was mine.

Q. Whose shot was it that killed Dansby?

A. Boyd's.

Q. The second was Davis's at you?

A. Yes, sir.

Q. You fired the third?

A. Yes, sir.

Q. Do you know who it was that shot Eugene Stanley here?

A. My brother.

Q. How long did Dansby live?

A. I think he lived about a week.

Q. And then died, did he?

A. Yes, sir.

Q. At your house?

A. No, sir; he died at Jim Stevens's house.

Q. I believe you say it was Davis, or Myers, whichever his name is, who demanded of you your money?

A. Yes, sir.

Q. When he was there telling you to throw down the chain, and give out your rusty change, you say, I believe, at that time Richard Butler was upon the boat; where were the others?

A. They were on the bank.

Q. About how far from you?

A. They were about as far as from here to that railing [indicating about 30 feet].

38 Q. They was upon the bank?
A. Yes, sir.
Q. The banks are pretty steep there?
A. Yes, sir; tolerable steep.
Q. Are there not two banks there, the first and second bank?
A. Yes, sir; first and second bank, and as far as that matter I believe it is the third where the house is.
Q. Were they standing on the first or second bank when this shooting occurred—the other party, Dansby, Stanley, and Boyd?
A. Like here was the water, and Davis and I was on the first bank, right at the boat, the first bank right at the edge of the water; the second is where Stanley and Boyd and Joe Byrd and John Dansby was.
Q. How old a man was Dansby?
A. I don't know, sir; he has several grown children.
Q. How far did he live from you?
A. Well, about a mile and a half, I reckon.
Q. Did you see Dansby when he fell?
A. Yes, sir; he was right in front of me; right by the side of me, you might say.
Q. Do you know what he was doing when he was shot?
A. He wasn't doing anything; he had his Winchester in his hand, and had it by the side of him, hanging down.
Q. Why did you take your gun with you when you went down there; the pistol?
A. I always carry the pistol all the time; I always did.
Q. This was, you say, about 11 o'clock at night?
A. The way I have got it it was about ten or eleven.
39 Q. Of course Davis was killed?
A. Yes, sir.
Q. You are the man who killed him?
A. Yes, sir.
Q. Did these men tell you when you first went down there anything about where they were from, or where they wanted to go?
A. They just said they wanted across.
Q. Did they have any horses with them?
A. No, sir; didn't have any horses at all.
Q. They were all afoot?
A. Yes, sir; each and every one of them was afoot.
Q. Boyd, then, had one pistol which was empty when you got it; that is, the loads were all shot out?
A. Yes, sir; he had two pistols.
Q. When you caught him he didn't have two pistols, did he? He had discharged one; where was the other one?
A. Lying right up on the rock cliff by him.
Q. I thought you said he threw one in the river?
A. He did.
Q. Did he have that one?
A. No, sir; one was on the bank and one was in the creek. He only had one out when I got there.
Q. He told you he had thrown one in the creek?
A. Yes, sir.

Q. It was Butler shot Boyd with the gun?
A. Yes, sir.
Q. What kind of shots was it that shot Boyd?
A. It was small bird shots.
Q. Did you see the shots in him, in his clothing?
A. Yes, sir.
Q. Small shots, were they?
A. Yes, sir; small shots.
Q. Do you know what name Stanley went by?
A. Echols.
Q. Who told you that? How do you know that?
40 A. Boyd told me he went by the name of Echols.
Col. GRACE. We object to that.
Col. CLAYTON. When did he tell you that?
A. That was the same night, and also the next morning.
Q. What time in the night was it he told you this man's name was Echols? How long after the fight?
A. After we went and got Boyd and put him on the gallery and I talked with him about it, and then he told me just how it was, what his name was.
Q. Did he tell you who all of them was who were with him?
A. Yes, sir.
Q. Who did he say the others were?
Col. GRACE. We object to what Boyd said about Stanley going by the name of Echols; it is not part of the res gestæ at all. It is a statement by Boyd that ought not to affect Stanley at all. If Stanley had said it it would be all right, but it is by the other party.
The COURT. The understanding is, of course, it will not be taken against Stanley; the jury will be charged as to that. If it affects Boyd he will have a right to give the entire conversation.
Col. CLAYTON (to witness). You say that Boyd told you that this man here (Stanley) went by the name of Echols?
A. Yes, sir.
Q. Now go on and state all he said about the men who were with him.
A. Here is what he told me: He said Eugene Stanley went by the name of Echols, but that wasn't his right name; his name was Eugene Stanley. That is what he told me. And this other one went
41 by the name of John Myers, but they cal'ed him John Davis.
Q. That is what Boyd told you?
A. Yes, sir.
Q. You knew Boyd?
A. Well, I am satisfied I did.
Q. How long had you known him?
A. About 2 years.
Q. Where did he live?
A. Live, around there with Abe Boyd, on Scullyville Prairie, his brother.
Q. Is he a white man or an Indian, John Boyd?
A. John Boyd is a white man.
Q. Do you know what the other man is?
A. He claims to be a non-citizen.

Q. How do you know he claims to be? Have you just simply heard that?

A. I have only just heard it; he hasn't told me anything about it himself.

Q. What was Dansby's given name?

A. John Dansby.

Q. This thing occurred in the Choctaw Nation?

A. Yes, sir.

Q. In the Indian country?

A. That is right.

Q. When Davis shot you say you fell on your knees just before that time?

A. Yes, sir; just before he shot.

Q. Do you know where his shot went?

A. It went right in the creek.

Q. As far as you are concerned where did it go?

A. Right over my head.

Q. After this shooting if anybody came there please state who came first.

A. I couldn't tell.

Q. Did anybody come down afterwards?

A. As far as that matters, before I left after the doctor Jeff Campbell came, and Simon Dansby, and they got Joe Byrd and fetched the
42 boat up the river and put John Boyd on it.

Q. Who was that?

A. Simon Dansby and Jeff Campbel. They got the boat and got with Joe Byrd and taken the boat up to where I and John Byrd was.

Q. How far did they live from there?

A. About a mile and a half—the same distance that John Dansby did.

Q. Did Dansby do any shooting?

A. No, sir; his gun wasn't discharged at all.

Q. You saw his gun afterwards?

A. Yes, sir; I paid strict attention to it.

Q. I am talking about John Dansby.

A. He didn't shoot at all; I looked at his gun; it wasn't discharged at all.

Cross examination:

Mr. HARMON (attorney for John Boyd). You say Dansby didn't fire at all?

A. No, sir.

Q. You knew how many loads were in the gun?

A. No, sir; I didn't.

Q. You didn't know?

A. No, sir.

Q. How do you know whether he fired or not?

A. His gun wasn't smoked up with powder at all.

Q. Fresh cleaned out?

A. Yes, sir.

Q. Hadn't been fired since it was cleaned out?

A. No, sir.

Q. When did you clean it?

A. I looked at it and paid strict attention to it.
43 Q. You looked at it before you started down there?
A. No, sir.
Q. When was it you cleaned it before that—before the fight?
A. I never had nothing to do with cleaning his gun at all.
Q. Was it his gun or yours?
A. That was his own gun.
Q. Where did he get it?
A. That is too hard for me to tell.
Q. Where did he get it that night?
A. Out of my house.
Q. He was staying all night with you?
A. Yes, sir.
Q. I will ask you while I am in that connection if you didn't state to Mr. Toppin, when he was going down there next morning with you—you know Mr. T'ppin up there, don't you?
A. Yes, sir; I know him well.
Q. If you didn't tell him that Dansby was the man who had killed Davis?
A. No, sir, no, no.
Q. Did you state that to anybody?
A. No, sir; I killed Davis myself.
Q. Did you state that the next day to anybody, that Dansby was the man who killed Davis?
A. No, sir.
Q. You always claimed you killed him?
A. Yes, sir.
Q. Before you came down here before the commissioner did you claim it before that time?
A. I claimed it all the time.
Q. You never told anybody up there that your brother, or that Dansby killed Davis?
A. No, sir.
Q. You never told that?
A. No, sir; I didn't.
Q. Did you go down to the boat before you went down there armed; did you go before you took the crowd down there?
44 A. I didn't go down there at all; I just opened the door and answered, and they said they wanted across; I stepped back in the house and woke the boys up.
Q. You didn't go outside at all then; you just stepped to the door?
A. I stepped out on the gallery.
Q. You didn't got go down towards the boat?
A. No, sir.
Q. You didn't know who was down there, did you?
A. I could not catch the voice.
Q. You knew John Boyd, did you?
A. Yes, sir.
Q. You knew him well?
A. Yes, sir; whenever I hear his voice I know who it is.
Q. You didn't know how many there was down there?
A. No, sir.

Q. What did you want to carry a whole army down there for; you didn't know whether there was but one, or more than one?

A. That's it again; the boys just picked up and went down.

Q. You woke the boys up and went down?

A. Yes, sir.

Q. What did you call them for?

A. I wanted them to help put these gentlemen across the creek; I didn't know how many there was.

Q. Do you know old man MacGhee?

A. Yes, sir.

Q. How far does he live from you?

A. I don't know, sir, how far he lives.

Q. Give me a guess at it.

A. No, sir.

Q. Is it a thousand miles?

A. I wont tell you anything about it at all.

Q. Will you give me an idea how far it is from your house to
45 MacGhee's; is it a mile and a half?

A. I never measured it at all; I couldn't tell you anything about it. MacGhee is outside there; you can ask him about it.

Q. You wont tell me how far it is?

A. I will tell you the truth just as it is.

The COURT. Give your best opinion.

The WITNESS. Well, we will put it about a mile and three-quarters.

Q. I will ask you if you and your brother Joe was at his house that night?

A. I couldn't tell.

Q. I guess you can tell whether you were or not?

A. I don't know where Joe was at—Joe was at my house.

Q. Where was you?

A. I was at my house, too.

Q. Did you go to MacGhee's that night?

A. No, sir; I did not.

Q. Did you send anybody there for him?

A. No, sir; I didn't.

Q. Did you get his gun anywhere that night?

A. I didn't get his gun.

Q. Did any one of your crowd have his gun?

A. I don't know anything at all about his gun at all.

Q. Did any of your crowd have MacGhee's gun?

A. I don't know anything at all about MacGhee's gun at all; if I did I wouldn't have stood out at the first and said I didn't know anything about it; I have got a Winchester and pistol I use myself.

Q. O, yes; you were pretty well heeled; you had a Winchester and pistol both?

A. Yes, sir.

46 Q. You haven't got any shotgun?

A. No, sir; I don't want them at all.

Q. Then you don't know whether MacGhee's gun was in that crowd at all or not?

A. I don't know anything about MacGhee's gun; all I can give an account of is my Winchester and pistol.

Q. You say you didn't go to MacGhee's or send anybody there?

A. I didn't send anybody there or didn't go.

Q. Did you leave your house at all after you went down to the ferry, and go and get up this crowd?

A. I didn't leave my house at all.

Q. Where was Dick Butler?

A. He was at my house.

Q. How many did you have at your house that night?

A. Richard Butler, Joe Byrd, John Dansby, and myself.

Q. Where was your folks?

A. I haven't got no folks; I aint got any use for folks.

Q. You live in that little house right where I met you, and where you denied the shooting took place. Didn't you tell me and Mr. Cole you didn't live there, and you didn't know who did live there, and that the shooting took place four miles above?

A. I told you I didn't run the ferry; you asked me something about the ferry.

Q. Didn't I ask you right there standing in the creek—didn't I ask you if that was the place where the killing occurred, and you said, "No; it was four miles above here," and you said there was two ferrys on Casche; didn't you say that?

A. I seen you ride in the creek, ride on the rock ford——

47 Q. Didn't you tell me that, that the killing didn't occur there, when I asked you to p'int out the place to me?

A. I live right on the hill where I met you.

Q. Didn't you tell me you didn't live there?

A. Do you want to know the reason——

Q. Answer my question. Did you not tell me that?

A. No, sir; I didn't.

Q. In the presence of Mr. Cole there you say you didn't live there, and the killing took place above there?

A. Everybody knows I live there.

Q. Did you say that? Do you swear now you didn't say that?

A. I will tell you just how it was. Outside of this court I will tell you anything.

Q. Certainly, you will just tell me a lie any time; don't make any difference about that.

A. Maybe we both will. I wasn't going to tell you how it was when we wasn't in the court-house. I didn't think I had any right to.

Q. But you could answer a civil question?

A. I wasn't going to answer a question up in that nation. If I had told you where the fight commenced you would have told me it was somewhere else; I was sharper than you are. You met me in the creek and asked me where the fight was, and I told you it was four miles up, but when I come to tell the judge I swear it.

Q. Didn't you tell me just now that I didn't ask you that question?

A. I told you the reason; if I had told you where the fight was you would have come in the court-house and swore it was somewhere

48 else; I knowed you. I knowed what you would have swore, so you just as well let me alone.

Q. I will let you alone, too.

A. You may just as well.

Q. I let such men alone as you are.

A. I don't want to tell my business to such men as you are, except in the court-house.

Q. I didn't ask you anything about the facts.

A. I was sharp enough not to tell you. You would have put it down on your books, and come here and had me marked off some place else.

Q. Mr. Cole was there.

A. I don't care who was there; if you had brought judge with you, or some other man, I would have told you just where it was.

Q. You knew Boyd when you went down there?

A. No, I didn't know him either; I didn't tell you I knew Boyd.

Q. You didn't know Boyd when you went down there at all?

A. I didn't know Boyd until he got shot, and I knew his voice.

Q. How do you know who shot Dansby?

A. Well, he was standing just so [indicating].

Q. Who was?

A. Boyd.

Q. How do you know?

A. I knowed him by the bulk he had on his back; I knowed he had shot and went up the river, and I kept right on after him.

Q. It was a light night?

A. No, sir; it was dark.

Q. You had to follow him by the light of his pistol; didn't you swear that?

A. Yes, sir; I could hear his feet, of course.

Q. He was shooting back at you?

A. No, sir; I didn't say that.

Q. How was he shooting; you say he was running up the river; was he shooting in front of him?

49 A. I couldn't tell anything about how he was shooting at all, but I was going according to report of the pistol.

Q. You said a minute ago you went by the light of the pistol?

A. Of course; there is no difference.

Q. Were you going by the light or by the report?

A. Report and light all the same.

Q. Which way was he shooting?

A. I couldn't tell which way he was shooting; he was shooting right in front of me.

Q. Was he shooting towards you or from you?

A. I seed the blaze; that is all.

Q. If you could see the blaze of the pistol you could tell which way it was going, whether towards you or from you?

A. No, I couldn't.

Q. You knew he had shot Dansby in the back; you stopped and looked at Dansby's wound, did you?

A. No, sir; that won't do; I didn't tell you that.

Q. You don't know whether he was shooting from you or at you?

A. He was pulling that trigger, as you might call it, and running up the stream.

Q. You were right after him?
A. Yes, sir.
Q. Right close to him?
A. No, sir.
Q. How far from him?
A. About the distance from that wall over to this one [indicating diagonally across the court-room, a distance of 70 or 80 feet, more or less]; I wasn't following exactly right after him; this creek bends, and I was kind of going across.
Q. You couldn't tell which way he was shooting?
50 A. Of course, any person bound to have a judgment, but I couldn't tell which way he was shooting.
Q. He was just going up the creek shooting his pistol. Was he hollowing?
A. He was hollering; yes, sir.
Q. Did you command him to surrender?
A. Yes, sir; I did.
Q. When?
A. When he got in the creek, swam up to the rock cliff, and couldn't climb; there wasn't a tree, or grass, or weed, or anything for him to get hold of.
Q. Where was Joe?
A. Right there at the house—in front of the house, at the boat, and I and Boyd was up the creek.
Q. I understood you to say you told him to stay there and watch Stanley and you would go and get Boyd?
A Yes, sir.
Q. How did you know it was Boyd?
A. I didn't know him until he got the shots in him; when he hollered. I knowed his voice.
Q. When did you first hear him holler?
A. Right there at the fight.
Q. He got shot in the back the first time?
A. No, he wasn't either; he was sprinkled in the breast, and he run and got it back from heel to head.
Q. Where was Davis at the time that Boyd got shot in the back?
A. He was laying there dead on the ground.
Q. At the time that Boyd was shot in the back?
A. No.
Q. That is what you said?
A. After I shot Davis down, and Boyd shot Dansby first, and Davis shot at me, but he didn't hit me, and I shot Davis, and Richard shot Boyd; Richard Butler.
Q. How far did Davis fall from that boat?
A. He fell down the hill in front of the boat.
51 Q. How far down the river or creek?
A. He didn't fall down the river at all.
Q. Where was the boat located?
A. In front of the house.
Q. Do you know where there is a big sycamore tree there?
A. Yes, sir.

Q. Where was that boat from there; where was the boat with regard to the sycamore tree; did you have it hitched to that tree?

A. We had the boat tied to the sycamore tree. And that night when I wanted to go across I and Joe put Davis out of the road.

Q. You and Joe moved him?

A. Yes, sir; moved him out of the water.

Q. How far was Davis below the sycamore tree when he fell?

A. He fell up here [indicating on map]. He fell on the first bank, right in the regular wagon road.

Q. How close to the water?

A. Right at the edge of the water, close to the sycamore tree, and we taken him out of the road.

Q. He fell in this road here?

A. Yes, sir.

Q. To the north of the sycamore tree?

A. It does not run north; I am just satisfied of that.

Q. I want to know where he fell there?

A. He fell with his head right towards my house.

Q. On the second bank?

A. That's right.

Q. How far from the sycamore tree?

A. He fell with his feet right towards the sycamore tree.

Q. How far was he from it?

A. That would be pretty hard for me to tell.

The COURT. Just give your best impression?

The WITNESS. I reckon about five feet.

52 Q. Was that where he was lying next morning when he was found?

A. Oh, we put him out of the road.

Q. Who did?

A. I and my brother—we couldn't get a horse on the boat at all until we moved him.

Q. Who was there present when you and your brother moved him?

A. I could not get my horse on the boat until we moved him out of the way.

Q. Who was there when you moved him? Was there any one there when you and your brother moved him?

A. No, sir.

Q. Do you not know that John Davis, or John Myers, was shot ten or fifteen yards below that sycamore tree, and there was a pool of blood there next morning where he fell?

A. We laid him there, and he laid there all night until next morning.

Q. Do you not know that you told different parties that he fell there and that he laid there?

A. No, sir.

Q. Do you not know he was that distance below?

A. No, sir; we put him up on the hill; we didn't want to ride over him.

Q. Do you not know there was a fire built down there, and he was there when he was shot?

A. There wasn't any sort of fire there, only fire in the house. There was a fire there, too, but a different kind of fire, fire from their guns. There was no fire there; had no use for it.

Q. You just left him out there all night. Now, the truth of the matter is, there was a fire in the yard, away from the boat.

A. It wasn't down at the ferry.

Q. You said you didn't have any fire except in the house, while ago.

53 A. I said yard while ago, for John Boyd is the man who wanted the fire there in the yard.

Q. That was after he was carried up?

A. Yes, sir; he was cold, he said, and he wanted a fire in the yard.

Col. CLAYTON. That was after the shooting?

A. Yes, sir; he said he wanted a fire in the yard; he was cold.

Mr. MARMON. You did not go and get anybody else to come there to help you, before the firing?

A. No, sir; I didn't.

Q. Did you know before you went up to where Boyd was where Dansby was shot?

A. Dansby was laying on the ground, hollering.

Q. Did you know where he was shot; what place about his body?

A. No, sir; I didn't.

Q. How could you tell John Boyd when you went up there? You pretend to detail a conversation to him, that he shot Dansby in the back, and he intended to break his back; how come you to be able to tell him when you didn't know where he was was shot?

A. I can answer it; John Dansby said John broke his back.

Q. Why didn't you tell that a little while ago?

A. That is just the way it was; I can mighty quick answer the question if you want it answered. He said, "Boys, they broke my back."

Q. When was that he said that?

A. After he got shot.

Q. How long after?

A. I didn't have any watch or clock.

Q. It wasn't more than a day, was it?

Col. CLAYTON (to witness). Why do you not answer the best you can; give your best impression.

The WITNESS. I can guess at it, but guesswork don't work; I didn't have any watch or clock.

54 Mr. MARMON. Now, I want to know how long it was after Dansby was shot until he said this?

A. Just as soon as he was shot he hollers out, "They have shot me." He says, "Boys, don't shoot me any more; you have broke my back."

Q. Joe Byrd was there, was he not?

A. Yes, sir.

Q. At that time Davis had his pistol on you?

A. I had shot at him, or was fixing to do it. Davis was there with me at the boat, and he threw down on me, and asked me to give him my money, and John Dansby and Joe Byrd started towards that direction.

Q. He had thrown down on you, then, before they started in that direction?

A. Yes, sir.

Q. He had his pistol on you?

A. Yes, sir; Joe Byrd and John Dansby started towards me. Just as Dansby got down the hill towards where I was he was shot in the back.

Q. When did Davis shoot at you?

A. After Boyd shot.

Q. How long?

A. I do not know; I could not tell how long.

Q. Was it right at once, or several minutes?

A. It was altogether; pretty close by together.

Q. Were you off the boat?

A. Yes, sir.

Q. You were on the land, and had your back towards Boyd, did you not?

A. No, sir; I had my side to the boat; I was trying to put the key in the lock.

Q. You ran the ferry across east and west, didn't you, across the creek?

A. Yes, sir.

Q. Boyd was west of you, was he not?

A. Yes, sir.

Q. Did you have your face towards the river, or towards Boyd?

A. I had my face north.

55 Q. You were trying to unfasten the boat when Boyd shot?

A. That is right.

Q. Tell the jury how you could see Boyd, and see what you did there.

A. How came I to see Davis was he said: "Lay it down"——

Q. You were looking at him, wasn't you?

A. No, sir; when I come to look at him he had his pistol right on me; standing right to the west of me.

Q. You were not looking very closely at Boyd, then?

A. My gracious alive, I knowed where Boyd was standing.

Q. You knew it was Boyd?

A. That's right; I do; I am satisfied it was.

Q. What was it Boyd said up there when you arrested him?

A. He says to me, says he, "Martin." I says: "What?" "Where did I hit John Dansby at?" I said: "You hit him in the back," and he says, "Well, I aimed to break his back," and he goes ahead and told me how many men he had killed.

Q. How many men did he say he had killed?

A. I didn't pay strict attention how many men he said he had killed. He only 'lowed that was not the first man he had killed.

Q. You haven't known him ever to kill anybody, have you?

A. Well, to my knowings I haven't.

Q. You never knew of him being in a difficulty?

A. I couldn't go back and tell about his difficulties; I might tell something that was not so.

Q. Was there any other conversation there with him at that time?

A. Yes, sir; Simon Dansby and Jeff Campbell——

Q. You say you make your business running a ferry up there?

A. I do.

56 Q. Is that the only business you have.

A. I have other business, as far as that matters.

Q. I will ask you if that ferry is worth anything up there?

A. I could not tell what it is worth; it is worth something to me; it is worth right smart to anybody else. If it wasn't there when they come there when the creek was up they could not get across.

Q. The creek is hardly ever up, is it?

A. I believe I can prove by every man it is always up.

Q. It was down the day I was there. I guess you ran it down because I was coming. Do you not know that in ordinary weather a man can walk across; that you do not take in 25 dollars per year in ferriage?

A. I take over $25.00; I am satisfied of that. You wouldn't undertake to go into it yourself when it is up; I am satisfied of that.

Q. I will ask you now, Martin, if these parties just said they wanted your rusty change?

A. That is just what Davis said.

Q. How many cattle have you up there.

A. I have some few old cattle.

Q. About how many?

A. I wont be guessing on them; I do not know where they is, or what they is; I own a few, I am satisfied.

Q. You do not feel very unsafe up there with what money you keep, do you?

A. I bet you I can live on money and get it honest. I will bet you I have got $100.00 in my pocket now. How much will you bet I haven't got it? (Laughter.)

Q. Where did you get it?

A. That's all right; I have got it. Do you want to see it?

57 If it is necessary to the judge I will put it in sight.

The COURT. No, no; I am satisfied you have it.

Mr. MARMON. I say, it is generally understood you are not a very wealthy man up there? That is so, isn't it? (Witness here draws from his pocket a roll of money and tosses it to Col. Clayton with the request that he count it to see whether or not there is $100.00 of it.)

Q. You haven't got this fixed for this occasion?

A. I never show money until a man wants to see it. If a man wants to see it very bad I will show it.

Col. CLAYTON. There is $100.00 here, Martin; much obliged. (Making motion as if to place money in his pocket.)

The WITNESS. You mustn't rob me! (Laughter.)

Mr. MARMON. Did you get this for this special occasion? Was it not understood before the commissioner you didn't have any money; didn't you fix this up?

A. No, sir; I have always had money; I always manage to have it.

Q. You say you didn't get that for this special occasion?

A. If you will come up on me any other time you will see me with this.

Q. Did you get that for this occasion here?

A. No, sir. I wouldn't have shown this if you hadn't been so inquisitive.

Col. GRACE (Att'y for defendant Stanley). I understand you to say that Davis told you to "drop that chain." You had the lock and
58 chain and key in your hand; he told you to drop it, and presented his pistol.

A. Yes, sir. He presented his pistol first before he made the remark.

Q. He presented his pistol first and held it on you and said "drop that?"

A. Yes, sir.

Q. You did not have your pistol drawn out of your scabbard at that time?

A. No, sir; I didn't.

Q. Will you explain how it is that you drew your pistol and shot him before he could shoot you?

A. He shot first.

Q. You had the chain in your hand?

A. No, I throwed it down just as he had ordered it.

Q. Drew your pistol and shot the poor fellow before he could do anything?

A. No; he shot first.

Q. At you?

A. Yes; that's right.

Q. He missed you?

A. Yes, sir; he was on the front side of me, right west.

Q. That is the way you explain it. Then you drew your pistol and shot him?

A. Yes, sir; that's right.

Q. He wasn't very handy with a pistol was he?

A. I don't know anything about him, only saw him on that night.

Q. Then you shot him twice; what did you shoot him twice for; were you not satisfied with shooting the man once?

A. No; I wanted to make safe.

Q. You had come down for the purpose of getting him?

A. No, sir; he said he wanted across——

Q. Where did you hit him first time?

A. I could not tell, but he had a hole in his head and one in his eye.

Q. Then you hit him in either one or the other of those places
59 the first time you shot him?

A. Yes, sir.

Q. How near were you to him?

A. About to the distance of that table was the length of me from him.

Q. Did you scatter his brains any?

A. I couldn't tell you; I had no time to hunt for it.

Q. Was there any blood spattered on you?

A. No, sir; there was blood where he laid.

Q. What did you shoot him the second time for—you say you wanted to be sure and get him?

A. Yes, sir.

Q. Did he fall the first time?

A. Yes, sir.

Q. After he was down you shot him in the eye or in the forehead?

A. I don't know; I know I shot after he was laying down, and I went on by.

Q. You are not afraid of dead men, are you?

A. I don't think I was afraid of him when he was on his feet, and I don't think I would be afraid of him when he was shot.

Q. What did you shoot him after he was shot for?

A. I couldn't tell anything about it; I wanted to make sure I had hit him.

Q. Were you mad at him?

A. It is enough to make anybody mad; to go there and have people want you to put you across, and then work another trade on you.

Q. That last time you shot him because you were mad?

A. Mad wouldn't take effect at all.

Q. You are backing out with your boat?

A. I wouldn't put that in at all.

Q. This gun that was left laying in the boat Richard Butler
60 picked up?

A. Yes, sir; that's right.

Q. How many times did you fire in all?

A. I am satisfied that I shot twice, but I could not tell whether I hit him twice or not; but I shot once when he was laying down, and then I run right up where John Dansby, John Boyd, and Joe Byrd was.

Q. Did you say before the commissioner "I think the house was 25 or 30 yards from the ferry?"

A. I don't believe I could make that creek that far; it would be impossible; I could not make it up that far. It is about 100 yards from the house.

Q. Did you not say before the commissioner that it was only 25 or 30 yards from the ferry?

A. About 100 yards from the house.

Q. I know that is what you say now. I am asking you what you said about it before the commissioner?

A. I am satisfied it was about 100 yards from the ferry.

Q. I will ask you if you said this before the commissioner: "They came up to the ferry Sunday night about 11 o'clock, and called me to come down to the boat. I was at my house, about 25 or 30 yards from the ferry." Did you say that?

A. About 100 yards.

Q. What is the reason you don't answer it?

A. I am answering it just as free as I can.

Q. Did you say that before the commissioner?

A. About 100 yards.

A. I will ask you who went down with you from the house to the ferry?

A. John Dansby, Joe Byrd, Richard Butler, and me; that made four.

Q. I will ask you if you didn't say this before the commissioner:
61 "I went down to the ferry, and my brother, Joe Byrd, and Richard Butler and Simon Dansby and William Emory?"

A. William wasn't there at all.

Q. Now, didn't you say that?

A. I know just who was in my house, and I know just who wasn't.

Q. I know you know, but the question is whether you will tell or not. Did you not say that William Emory was there?

A. William wasn't on the place.

Q. Did you not tell the commissioner that Simon Dansby and William Emory went down with you?

A. William wasn't there. John Dansby was there and Joe Byrd was there and Richard Butler was there, and so was I.

Q. Did you not say before the commissioner that Simon Dansby and William Emory went with you from the house.

A. It must be a mistake some way or another; I just naturally know who was in the house.

The COURT. You state, then, you didn't say these two men went with you?

A. No, sir.

Here court took a recess until 1:30 p. m.

62 (Carbary's "B.")

MARTIN BYRD, continued.

Col. GRACE. I was asking you before noon in regard to the parties that went down with you, and you said before the commissioner you went with Joe Byrd, Butler, Simon Cansby, and Emery. Did you not testify before the commissioner as follows: "My brother was up there with Dansby, so was Emery, five of us; three men were all that were there." I will ask you if you told the commissioner that?

A. I might have told him that, but then I don't know anything at all about it now.

Q. You might have told him that. When you testify you are particular about what you say; or do you just state whether you know anything about it or not?

A. If I stated it it was surely, undoubtedly a mistake.

Q. It was not a mistake, you say?

A. It was a mistake—bound to have been.

Q. Who made it?

A. If I stated William was there, it was a mistake. William was not there.

Q. What did you mean by saying "five of us?"

A. I meant Joe Byrd.

Q. When you stated five, you did not mean five?

A. I called the names all over.

Q. You deny saying this now?

A. Well, surely, undoubtedly. I don't know anything about it, about Simon Dansby and Emery being there. I know Richard was there.

63 Q. I would like to know whether you say you stated this or not?

A. If I said it, it was sure a mistake.

Q. You deny saying it?

A. I don't deny anything about it at all.

Q. That was not long ago?

A. No, sir; not long.

Q. If you did say it, it wasn't true?

A. No; that wasn't true, I am satisfied.

Q. Now, then, I will ask you if you testified as follows: "I had a pistol, my brother had my Winchester, Dansby had his Winchester, and Butler had no arms, and Emery had no arms." Did you say that?

A. If I said that, it was a mistake.

Q. How could you be mistaken? Don't you know who was there?

A. Yes, sir.

Q. You know Butler from Dansby?

A. Yes, sir.

Q. Did you know this man Emery?

A. Yes, sir.

Q. If he was not there how came you to be talking before the commissioner about Emery?

A. It was just through mistake.

Q. You say Emery had no arms. I will ask you how many pistols Boyd had?

A. 2.

Q. Did you see them?

A. I seed them after he was captured.

Q. But before that?

A. No, sir; I din't see nary one.

Q. How did he have them?

A. He had one around him when he was captured, by his belt and scabbard.

Q. I will ask you if he didn't have one buckled around him on the outside of his clothes and one in his vest concealed?

A. Why, his belt was buckled around his waist, and where he had his other pistol I could not tell.

64 Q. If you stated before the commissioner, one was buckled around him and one concealed——

A. I say yet he had one buckled around him.

Q. But there was one you could not see?

A. I could not see neither one.

Q. Now you say he had two concealed?

A. I am satisfied he had one buckled around him, for when I went to where he was we taken the belt from around him.

Q. Do you say he had one concealed or two concealed?

A. Of course, that's a matter he had both concealed until I seen them.

Q. Why did you say before the commissioner he had one concealed and one buckled around him?

A. I couldn't tell where he had neither one.

Q. Why did you say it?

A. It was a mistake if it was said.

Q. I would like to know how many mistakes you are making this time?

A. Made two on that pistol, because I didn't see them until I went and captured him.

Q. You now say there was four, and before you said there was six. I will ask you if you know George Fowler?

A. I don't remember a man by that name.

Q. Do you know Fannie Anderson and him both living in this town?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. Why did you say at the start you didn't know whether you knew him or not?

A. I thought about him living up there where I live.

Q. I will ask you if you said this here in this town, that your
65 crowd there at the ferry disarmed Standly and Boyd before any shot fired?

A. No, sir.

Q. And if Myers had given up his pistol he would not have got killed?

A. No, sir.

Q. That they wanted to kill Boyd so as to get $100 reward——

A. No, sir.

Q. Or they had offered a reward to kill him——

A. No, sir.

Q. That you were just from Missouri where you were going to get the reward?

A. No, sir; and I don't live in Missouri.

Q. You deny that?

A. Yes, sir.

Mr. MARMON. Do you know Adaline Butler?

A. Yes, sir.

Q. Did you see her the night of this difficulty?

A. No, sir.

Q. Did you send Richard Butler off anywhere?

A. No, sir.

Q. Send anybody off?

A. No, sir.

Q. You and Richard are not friendly now, are you?

A. Why, we just as friendly as before this occurred as far as I can think.

Q. You cannot think very far back though?

A. I am just as friendly with him as I was when I first seen him.

Q. You never told him you would have all to stick together and swear together on this thing because you might get into the killing of Davis?

A. I didn't say such, because I don't deny killing Davis.

Q. You never did deny it?

A. No, sir; nor I won't.

Redirect:

Col. CLAYTON. I understood you to say that when Davis fell he fell down in the road. Is that right?

A. Yes, sir.

Q. I understood you to say he fell near the edge of the water?

A. Yes, sir.

Q. And that you moved him that night?

A. Yes, sir.

66 Q. Who helped you to move him?

A. Brother Joe.

Q. That is when you came down with the horse?

A. Yes, sir.

Q. What did you bring the horse down there for?

A. I wanted to go and tell Dr. Foyle, and he lived on the other side of the creek.
Q. You call the first bank the bank that keeps the water back?
A. That's right.
Q. You and your brother Joe took him up and laid him out?
A. Yes, sir.

Dr. W. R. FOYLE.

Col. CLAYTON. State your business.
A. I do nothing but practice medicine, and postmaster.
Q. Where do you live?
A. At Oak Lodge—it is generally called Scullyville—Choctaw Nation.
Q. Do you know John Boyd, the defendant?
A. Yes, sir.
Q. How long have you known him?
A. Something about 15 years, more or less.
Q. Is he a white man or an Indian?
A. He is a white man.
Q. Where has he been living during that time?
A. He has been living about Scullyville County.
Q. Do you know Martin Byrd?
A. Yes, sir.
Q. How far do you live from him?
A. About 6 miles.
Q. He lives on Casche, does he not?
A. Yes, sir.
Q. State if you were at his house on the night of the 6th of April.
A. Yes, sir; I was.
Q. What night was it?
A. It was on Sunday night, Easter Sunday, the 5th or 6th, I don't remember which.
67 Q. At any rate it was Easter Sunday?
A. Yes, sir.
Q. Who came after you?
A. Martin Byrd.
Q. I suppose you went there at his request?
A. Yes, sir.
Q. Who did you find at Martin Byrd's when you got there, and what time in the night was it when you arrived?
A. I arrived there about half past 12 or one o'clock.
Q. Who did you find there?
A. John Dansby, John Boyd, and several persons; they were the only ones I paid any attention to, except the dead man lying on the bank of the creek. I saw him before I got there.
Q. Who was the dead man on the bank of the creek?
A. I didn't know him.
Q. You found John Dansby and John Boyd there?
A. Yes, sir; at Martin Byrd's house.
Q. What was the condition of Dansby when you found him?
A. He was wounded.
Q. What kind of a wound was it?

A. A gunshot wound.
Q. Where was he shot?
A. Shot in the back.
Q. Doctor, I will get you to point to the jury on my back about where the ball entered?
A. [Witness indicating.] About right there, a little to the left of the spinal column, below the left shoulder blade.
Q. What sort of a wound was that, what sized ball?
A. I would judge from the size of it it was what they call a .44 or a .45 calibre.
Q. State if the ball made it' exit from the body anywhere?
A. No, sir.
68 Q. It did not go clear through?
A. No, sir.
Q. Did you find him suffering?
A. Yes, sir.
Q. State whether or not it was a flesh wound or whether it was a fatal wound.
A. It was a fatal wound.
Q. Did you probe it?
A. Yes, sir.
Q. State if you informed him of the fact it was a fatal wound.
A. I did.
Q. How soon after you made the examination did you inform him of the fact?
A. Immediately after I was satisfied it would prove fatal.
Q. How long did it take you to satisfy yourself of that fact?
A. I presume it was half an hour.
Q. You probed the wound and made an examination and found it had not left the body?
A. Yes, sir; I found the bullet had not made its exit.
Q. Did you discover where the bullet was?
A. No, sir.
Q. Did you ascertain whether it went in the hollow of the body?
A. Yes, sir; that was my diagnosis.
Q. You found he was in the house?
A. Yes, sir.
Q. Where was Boyd?
A. He was out on the porch by the wall of the house.
Q. Was the spinal column touched?
A. Yes, sir; slightly touched.
Q. What part of the vertebra?
A. One of the nodules on one of the vertebra.
Q. That is one of the little bones that stick out?
A. Yes, sir; that was slightly touched, a small fracture of it.
Q. Boyd, you say, was out on the porch?
A. Yes, sir.
69 Q. What was he doing there?
A. Lying down.
Q. State if he was wounded in any way.
A. Yes, sir; he was shot with small shot.

Q. Where was he shot?

A. I hardly know how to express that more than he was just peppered with them in front and rear both.

Q. What portion of his body?

A. From the upper third of the thighs in front up to his neck, and behind near the same way.

Q. What kind of shot?

A. What I would term bird shot—the kind I shoot birds with.

Q. What kind of a coat did he have on?

A. He didn't have on any coat.

Q. Did you afterwards see his coat?

A. I afterwards saw his coat; he told me where to go and I would find his coat, and I went and found the coat.

Q. What kind of a coat?

A. It was a ducking coat.

Q. Did it have shot in it?

A. Yes, sir; shot holes, and some shot sticking in the coat; some went through and some didn't; some stuck in the coat.

Q. Did you take any shot out of his person?

A. Yes, sir.

Q. How deep did they go in?

A. Some deeper than others.

Q. About how deep?

A. Some penetrated through the skin considerably, others just through it, and others made a speck in the skin; none went very deep. He had no mortal wound. I told him so then.

Q. He was out on the porch. Which did you see first, Dansby or Boyd?

A. Boyd.

Q. Did he say anything to you when you first saw him?

70 A. Nothing more than "howdy," as well as I remember.

Q. Was he tied at that time?

A. No, sir; not that I saw.

Q. Was he being guarded?

A. Yes, sir.

Q. You then went in the house and saw Dansby?

A. Yes, sir.

Q. Did he say anything to you while you were in the house waiting on Dansby, Boyd?

A. No, sir.

Q. He did not call you out?

A. Not at that time.

Q. When you got through with Dansby I understood you went out to see him?

A. I did.

Q. Go on and state if he said anything to you.

A. He gave me his pocketbook and told me to take that.

Q. Did he take you by the hand before he did that?

A. Yes, sir; and pulled me down close to him; he said, "Come down, I want to talk to you. Here, take this, my pocketbook, and my watch."

Q. Was he complaining any?

A. Yes, sir; he said he was——

Q. If he complained to you, tell what he said.

A. He said he was hurt. I asked him what is the matter and how he was feeling, and he said he "was shot all to pieces, and I am hurt very bad."

Q. Did he think he was going to die?

A. He told me he did?

Q. He told you that he was going to die; was that before he took you by the hand or after?

A. After.

Q. Go on and state what else.

A. He wanted me to pay myself out of that; do all I could and pay myself.

Q. Out of what?

A. Out of his pocketbook.

Q. He gave you the pocketbook?

A. Yes, sir; as soon as he took my hand and drew me down partially to him he gave me his pocketbook right then.

71 Q. Go on.

A. He gave me some pocket knives.

Q. How many?

A. 4, and a watch.

Q. What kind of pocket knives were they?

A. I can't tell you.

Q. Did you ever see them afterwards?

A. I might have saw them, but I never examined them.

Q. Were they old or new?

A. One old knife, and the balance were new; one of them I can tell, it was a long-bladed knife with a horn handle [witness takes a knife from his pocket] with a blade like that, rough handle.

Q. Was that a new one?

A. Yes, sir.

Mr. BYERS. What is the object of this? If it is for the purpose of laying the foundation for other larcenys, it is not competent.

The COURT. I think the conversation is competent—what he said there. I do not think as the case stands now, other robberies would be competent. They may become competent.

Col. CLAYTON (to witness). You say he gave you three knives—four knives, one of them worn, and the other three new, one a long knife with a horn handle?

A. Yes, sir.

Q. Tell all he said in connection with these knives.

A. He said, "Here, take these, and this special one, you take that and keep it yourself.

Q. Did he give you a reason?

A. No, sir.

Q. Go on and state what else he said.

A. I asked him what I should do with the watch, and he said send it to his wife whenever he let me know where she was.

Q. Did he let you at that time know where she was?

A. No, sir.

72 Q. Did he give any reason?

A. No, sir; he didn't know, I presume. I don't know; he didn't give me any reason.

Q. He told you he wanted you to send her the watch when he let you know?

A. Yes, sir; or when I found out; or when he let me know. He said that twice; one time when he would let me know where she was, and the other time when I would find out where she was. He told me where to go and find his coat. He told me to go up the creek the way that he and Martin Byrd went up the evening before, and I would find his coat on the bank of the creek, and find some knives and other things in the pocket of it.

Q. The way he and Martin Byrd went up the night of the shooting?

A. Yes, sir; the way that he went up the creek.

Q. What did he say you would find?

A. Some knives in the pocket of the coat; to get them.

Q. I want you to go on and finish the conversation. He told you, now, if you go up the creek the way he went on the night of the shooting—he and Martin Byrd went on the night of the shooting—that you would find his coat, and to get his knives that were in his pocket. Now go on and finish the statement.

A. That is all he said about the coat; to get Martin Byrd to go with me to the place where he was captured to show it to me, and I would find a pistol in the creek where he had dropped it, and to get that pistol out and give it to the old man and tell him to keep it as long as he lived, then give it to Jimmy.

Q. Jimmy is his brother?

A. I understood it to be his brother; he has a brother that name.

Q. Did he tell you where in the creek you would find it?

A. He told me right where Martin Byrd captured him, about

73 three feet from the bank over in the water.

Q. Martin Byrd is the witness was just on the stand?

A. I expect he was.

Q. You know he was in here?

A. Yes, sir.

Q. About three feet, did you say, from the bank?

A. Yes, sir; he thought about three feet from the bank.

Q. Did he say how the pistol got there?

A. He said he dropped it there.

Q. Finish the statement.

A. I believe that is about all he said about that pistol.

Q. Did he say anything to you about a gun?

A. Yes; he said that Myers' gun, a double-barrelled gun, was there, and for me to get that and carry it home with me.

Q. Is that the man was shot?

A. Yes, sir; he told me that was the man.

Q. Did he say where the gun was?

A. No, sir; he said the gun was there, but didn't say the identical place.

Q. You were to carry the gun where?

A. Home.

Q. Did he say what he wanted you to do with it?
A. No, sir.
Q. He told you to get the gun; it was Myers'?
A. Yes, sir.
Q. And carry it home with you?
A. Yes, sir.
Q. Any other statement, now, he made there; did he say anything about his co-defendant, Standly?
A. Yes; I asked him if Myers——
Mr. GRACE. I object to that.
The COURT. Anything he said out of the presence of the other defendant would not bind the other defendant.
The WITNESS. I asked him if Myer was at John Taylor's
74 when John Taylor was robbed. He said, "No, he reckoned not." I asked him if Eckles was there. He said, "I expect so." That is all was said about it.
Q. Anything said about the watch?
A. No; not then.
Q. Nothing said about Mrs. Taylor's watch?
A. Not between me and Boyd. He told me to get Myers' watch and take that string off it and throw it away, and I don't care what I done with the watch.
Q. Myers is the man you understood was dead?
A. That is what he told me the dead man's name was.
Q. Did he give you any reason why he wanted the string thrown away?
A. Did not.
Q. Do you remember any other statement he made to you at the time?
Col. GRACE. I want to save an exception to the admission of this conversation with Dr. Foyle. It seems to be altogether wholly irrelevant.
The COURT. Yes, sir.
Col. CLAYTON. Do you think of anything else was said there?
A. Nothing relative to the property more than John Boyd told me that he would give me his pistol that was captured with him, and asked me to call Martin Byrd up and he would have him to give it to me. I did so. He told Martin Byrd to let me have the pistol. Byrd started to hand it to me, and Mr. Tippens was standing by present and asked me to loan him the pistol until he came down to Fort Smith and went back. I told him all right he could have it. That was Robert J. Tippens.
Q. He was to bring the prisoners down, wasn't he?
75 A. Yes, sir; he was the only officer there at the time. I supposed he would take charge of them, which he did.
Q. This was between 12 and 1 o'clock?
A. Yes, sir; I talked with him more or less until 3 o'clock. Tippen was there then. Tippen got there about two or a few minutes after two.
Q. He was a deputy marshal, wasn't he?
A. Yes sir.
Q. During this conversation you had with the defendant, state if he—you have already stated he thought he was going to die with the wounds that he had—please state if during that conversation he was in that condition of mind as far as you know.

A. Unless he got it expelled. I had argued with him that he wouldn't die.

Q. State if you recovered his coat.

A. Yes, sir.

Q. When?

A. At daylight Monday morning. I found it on the bank of the creek near where Martin Byrd told me that he had went into the water.

Q. What kind of a coat was it?

A. Ducking coat.

Q. What color?

A. What I term a brown.

Q. You have already stated it had this little bird shot in it?

A. Yes, sir.

Q. Did you find anything in the pockets?

A. 4 pocket knives.

Q. New or old?

A. New. And some bottles of musk.

Q. How many bottles?

A. I couldn't tell you; other parties got them out.

Q. About how many?

A. I would guess 3 or 4 bottles.

Q. Had they ever been opened?

A. No, sir. And some tobacco.

Q. How much?

A. About half a plug.

Q. Anything else in the pockets that you remember?

76 A. No, sir; nothing that I am positive of.

Q. The musk and 4 new pocket knives. When he handed you the four knives before you found the coat where did he get them from?

A. Out of his pants pocket that were on him.

Q. That is eight pocket knives altogether?

A. Yes, sir.

Q. Did you find the gun?

A. Yes, sir.

Q. Where?

A. Found it setting in the corner of the house, inside of the house where Dansby was lying.

Q. What did you do with the gun?

A. Carried it home with me. I loaned it to Tippens that morning; he carried it a piece of the way, and I carried it on home.

Q. What became of it after that?

A. Turned it over to Martin Byrd.

Q. When?

A. About 2 days, or 3 probably, after that.

Q. What did you turn it over to him for?

A. To bring to Fort Smith.

Q. You turned this gun over to Martin Byrd to bring to Fort Smith?

A. Yes, sir.

Q. State if he was on his way to Fort Smith at that time.

A. He told me he was.

Q. Have you seen it ever since?

A. I have not.

Q. What did you do with the knives?
A. I gave them to Robert Tippens, the deputy marshal.
Q. Did you take any of the shot out of Boyd's person?
A. A few of them.
Q. Was he bad hurt?
A. No, sir; I wouldn't consider him dangerously hurt. I don't know how badly he was suffering; he was complaining a good deal, but he wasn't dangerous.

77 Q. No bones broken?
A. No, sir.

Q. About what number of shot would you say—you are familiar with the sizes of shot—what number would you say of shot did he have in him?
A. I guess they were No. 5's.
Q. How came you to ask for Eckles?
A. Because I wanted to find out, if possible, who had Taylor's property.
Q. Did you know Eckles?
A. No, sir.
Q. How came you to speak of Eckles?
Col. GRACE. I object to that, your honor. It seems to me the motive of the witness in speaking of Eckles might have been something entirely foreign——
Col. CLAYTON. I am trying to find out from him, if I can, how he came to use Eckles' name.
Col. GRACE. All right.
Col. CLAYTON. You did not know the man?
A. No, sir; but because he told me a man got away from there was named Eckles.
Q. Boyd told you that?
A. Yes, sir.
Q. Did he ever tell you different?
A. He never did.
Q. And then it was you asked him if Eckles was at the Taylor robbery?
A. Yes, sir.
Q. How far did Taylor live from there—from where that conversation took place, from that ferry there?
A. About 7 or 8 miles—7 miles.
Q. How far is it from here to Martin Byrd's?
A. 22 miles.
Q. What time did you leave that house that day?
A. I left early in the morning—daylight.
Q. After you had found the coat?
A. Yes, sir.

Q. Did you see anything more of Dansby, John?
78 A. I saw him just before I left.
Q. But after that?
A. Yes, sir.
Q. When did you see him the next time?
A. I saw him on Thursday afterwards.
Q. How long did he live?
A. I think he lived 4 days.

Q. Did you see him after he died?
A. No, sir.
Q. How long before he died did you see him?
A. I saw him in the evening about 4 o'clock, and I heard he died that night.
Q. State of what he died, the cause of his death, Dansby.
A. I think he died from the gunshot wound.
Q. You informed him when you saw him that he had a mortal wound?
A. Yes, sir.
Q. You saw him at 4 o'clock on the day he died; what was his condition then?
A. Dying one.
Q. What was he dying of?
A. Dying of that wound he had received.
Q. You saw him at 4 o'clock on Thursday evening after the shooting?
A. I think it was; as well as I remember now.
Q. Did he suffer much?
A. Yes, sir; very much.
Q. You have stated about all the conversation you had with Boyd; is there anything else? Did he say anything about the shooting?
A. No, sir; he never told me how the shooting came up at all.
Q. Did he say anything about it, in any way, as to what he had done?
A. Yes; he said that he had shot at one of them.
Q. Did he say who?
A. No, sir.
Q. State exactly what he said?
A. He says, "Doc., I had a good bead on one, and when I fired I never touched him; I don't know where the ball went." That is what Boyd said.
79 Q. Is that all he said about the shooting? Did he say anything to you about Dansby?
A. Yes, sir; I told him that Dansby was mortally wounded, he would have to die.
Q. What did he say to that?
A. He said, "I thought I put it to him about right."
Q. Did he make any other remark to you about the shooting of Dansby?
A. No, sir; not about shooting Dansby or any other of the parties, except what I have already said.
Q. That is all he said about the shooting?
A. Yes, sir.
Q. Said nothing about his property or what he wanted you to do, that you now remember?
A. Not relative to any of the parties there, any of them; no, sir.
Q. To anybody else?
A. Do you want the whole conversation?
Q. Yes, sir; all that he said.
A. He told me to go over to Abe's, his brother's—I understood it to be his brother's; he had a brother by that name—to get off early and go over to Abe's and deliver a message to him.
Q. What was the message?

A. That was to keep his money where these fellows will never get it.

Q. What fellows?

A. I don't know what fellows he had reference to. He said, "These fellows will never get it," and a few other things; to go and throw them in Cache, where no one would never know where they was.

Q. Did he tell you what these things were?

A. No, sir.

Q. Or why he wanted them thrown into Cache?

A. No, sir.

80 Q. Just told you to see Abe and tell him to keep his money, and to throw the other things into the creek so nobody would ever see them?

A. That statement is verbatim the way he made it to me, to go over to Abe's and tell him to keep his money so these fellows wouldn't get it, and to throw the other things into Cache so that anybody would ever know where they were; that is just about it.

Q. How far did the defendant live from Martin Byrd's, do you know?

A. I don't know where he was then living.

Q. Where did Abe, his brother, live?

A. Abe lived about one mile, I guess, from that place.

Q. From the ferry on Cache Creek, the Byrd Ferry?

A. Yes, sir.

Q. Did he make any other statement to you, doctor, in regard to these matters?

A. If he did, I can not call it to memory right now.

Q. You think you have stated about all he said to you on that occasion?

A. I think I have given the gist of it. He said he didn't care what went with himself, but he was sorry for his people; he had such talk as that, but that was not relative to any parties or persons.

Q. About what hour in the night was it he was doing this talking to you?

A. From 2 o'clock to 4 o'clock, I would presume, he would talk to me, and I would get down in a very uncomfortable position. The conversation was carried on in a low tone of voice; he didn't want the guards to hear what he said, apparently, and I would get down close to him so I could hear him talk, and it was a very uncomfortable position, and we would talk for awhile and then discontinue our conversation for awhile, and I would talk with other parties.

81 Q. Please state whether or not he seemed to be anxious to talk to you, and have you hear what he had to say.

A. Yes, sir; he appeared to be more anxious to talk to me than anyone else.

Q. What became of the knives?

A. I turned them over to Toppins.

Cross-examination:

Mr. MARMON. Did you give him any medicine?

A. Yes, sir.

Q. What did you give him?

A. I gave him half a grain of sulphate of morphine.

Q. Is that all?

A. That was all.

Q. He was suffering considerably, was he?

A. Yes, sir; he complained of suffering a great deal.

Q. Did he have any fever?

A. No, sir.

Q. He seemed to want to talk to you; you and he were not special friends that he would make a confident of you?

A. I never knew anything else but what we were good friends. I have always thought a good deal of John Boyd, and he appeared to of me. He always treated me just right.

Q. Treated other people right, as far as you know, too?

A. Yes, sir; as far as I know.

Q. Who else was present during this conversation?

A. No one heard the conversation.

Q. Was anyone else near?

A. No nearer than the guard.

Q. Where were they stationed?

A. Sitting on the edge of the porch.

Q. He was laying on the porch?

A. Yes, sir.

Q. What size is that porch?

82 A. I would suppose it is 8 x 12; probably 8 x 14.

Q. You would not say it was 16 feet?

A. No, sir; I don't think it is that long; I think it is larger than 8 x 10.

Q. What part of the porch was he on?

A. He was on the south end of the porch.

Q. Where were the guards?

A. They were setting on the edge of the porch.

Q. Facing the creek?

A. Yes, sir.

Q. How were they situated with regard to being at the middle or not at the middle of the porch? Were they about the middle?

A. No, sir; they were a little north of the middle.

Q. Put them 6 or 8 feet away.

A. Yes, sir; I presume about 8 feet, most of the time; sometimes they were probably closer.

Q. Who were the guards?

A. I never noticed any special one, only one of them was Jim MacGhee; that was the only one I noticed that I took any note of his name; there was other parties that would watch; they would relieve each other occasionally.

Q. Is that the man that is here?

A. I have not noticed him here. He is a colored man; I have not noticed him here, though.

Q. Who else did you say was on the guard beside him?

A. I don't know any of the others' names that was on guard; there was some others, but I don't know their names.

Q. You say this took place from 2 to 4 o'clock?

A. The principle part of the conversation.

Q. It took him two hours to tell you his "tale of woe." You say he said he didn't care ss much for himself, but he did for his family; seemed to be distressed about them?

83 A. He said he hated it on account of his people.

Q. Did you carry his message to Abe?

A. I did.

Q. The next morning?

A. Yes, sir.

Q. What did Abe say about it?

A. He never said a word; not when I delivered the message he didn't.

Q. What did he do, if anything?

A. He started to walk off; walked off around the house in an opposite direction out of my sight for a few minutes, then came back by me and started off down the road or trail, path, or whatever you might call it.

Q. He said he was going over to where his brother was, did he not?

A. No, not then; not after I delivered the message.

Q. When did he say he was going over there?

A. When I first told him I had seen John over on the creek.

Q. He did go over there, did he not?

A. I don't know.

Q. Do you not know that he went into one of the outhouses there where old man Boyd lived, got his pistol, put it in his belt, and said he would go over there?

A. No, sir; I don't know anything of that kind.

Q. Didn't you know that was where he was going when he stepped off to one side?

A. No, sir; I didn't.

Q. There is two rooms there with no connection between them, isn't there?

A. I don't know whether there is a partition wall.

Q. Do you not know they are not connected, no door between the two rooms?

A. No, sir; there was no open door.

Q. You would be compelled to go out of the room?

A. He was not in the room when I told him this message.

Q. Where was he?

84 A. He was in front of the house, outside, standing right in front of one of the doors.

Q. Where did you go?

A. I went back in the house and sat down by the table.

Q. You don't know where he went then?

A. I went to my horse after I delivered to him the message.

Q. You are getting it mixed up; you said you went in the house and sat down by the table. How is it now?

A. Do you want me to commence and tell it clear through?

Q. Yes, sir.

A. If you won't interrupt me I can do it. I went in and asked Mrs. Boyd and Mr. Boyd, who was setting at the breakfast table, if they had heard anything from John lately. They told me nothing, and asked me if I had. I told them yes, I had just left him; that he was over at the rock crossing on the creek; that he was wounded. They asked me if he

was dangerous. I told them not. I told them that he was a prisoner; they had had a fight and captured him, and Abe remarked at that time, "I will go and see him," and stepped out for a few minutes. I had commenced to eat at the table at that time. I told him, after I had quit eating, the message. Then he disappeared out of my sight around the house; was out of my sight for a few minutes, came back, and started down the path.

Q. You went in the north room of the house where you ate?

A. Yes, sir.

Q. Which way did he go when he went out; did he go south or north?

A. He went around out of my sight to the south first.

Q. To go into the other room didn't you have to go that way to get into the other room?

A. Yes, sir.

Q. A man would disappear out of your sight to go into the other room?

85 A. Yes, sir; to go into the room or to go around the room.

Q. Which way did he go?

A. I can not tell you whether he went into the room or went around the room.

Q. You know he came back directly and went on down the path towards where his brother was?

A. No, sir; not towards where his brother was.

Q. He went down the path which way, then?

A. Towards the creek, the nearest point of the creek from that house. That path don't lead to where his brother lay.

Q. You have had some trouble with Abe since that time, have you not?

A. No, sir.

Q. Were you not up there and assisting in that shooting scrape?

A. I was there when the shooting occurred.

Q. Do you not know you went there and knew these parties were hiding down in the bushes who did the shooting at him, and you went there for the purpose of decoying him out?

A. No, sir; I told the marshal I was going to deliver a message to Abe.

Q. I know, but when that shooting took place—this shooting scrape—did you not go up there and pretend you were going to see the old man, and talk there with him, and give him some kind of advice about it, when you knew at the same time that two other fellows were down in the woods waiting for him? You knew that they and Toppins was out there somewhere.

A. Toppins told me he was going there.

Q. What did you go there for?

A. I went out there to deliver that message.

Q. There was some shooting down there anyhow, was there not?

A. Yes, sir.

86 Q. What did they do then?

A. What did who do?

Q. Did they arrest him?

A. No, sir.

Q. Didn't arrest him?
A. No, sir.
Col. CLAYTON. Who was trying to arrest him?
Mr. MARMON. Toppin and two others.
Col. CLAYTON. They were officers, deputy marshals?
The WITNESS. Yes, sir.
Mr. MARMON. Was he a deputy at that time?
A. Yes, sir.
Q. You went up there to deliver this message?
A. Yes, sir.
Q. What became of you after you got your breakfast and delivered the message?
A. I went on home.
Q. You stated that when you said to him that Dansby was going to die, he said, "I thought I put it to him about right." Did he say that?
A. He said, "I thought I put it to him about right."
Q. You remember these words exactly?
A. Yes, sir.
Q. You were stooping down, then, over him?
A. Yes, sir; I wasn't stooping; I was lying on my elbow down close to him.
Q. Did he say that very loud?
A. No, sir.
Q. When was it he said, "Dock, I had a good bead on one of them, but missed; I don't know where the bullet went." When was it he told you that?
A. He told me that sometime during the conversation from 2 to 4; I didn't notice my time; I couldn't say about that.
Q. Was that before or after he said he thought he had put it to him about right?
A. It was afterwards that he told me that; after he said he thought he had put it to him about right.
87 Q. He told you that the man who left there was named Echols?
A. Yes, sir.
Q. That was all he knew about him; his name was Echols?
A. Yes, sir; he told me to get him if I could; he had $110.00.
Q. These shots, you say, were No. 5 shots, in the shotgun?
A. They were small shot; I would guess No. 5.
Q. He told you he thought he put it to them about right. Did he say anything about what they did?
A. No, sir; he didn't.
Q. He told you all that he did, but said nothing about what Byrd and his crowd did?
A. No, sir; never told me anything about that.
Q. He told you that he had swam the creek; that he had ran up the river to keep from being killed, did he not?
A. He didn't tell me what he went up for; he said he went up the creek—swam the creek.
Q. You had to pass right by Boyd when you went in the house to see Mr. Dansby?
A. Yes, sir.

Q. You knew that Boyd was shot?
A. Yes, sir; I did.
Q. He was complaining very much?
A. Yes, sir.
Q. You passed by him and went in to see Dansby first?
A. Yes, sir.
Q. That was what Byrd came after you for, to see Dansby?
A. Yes, sir.
Q. I will ask you if he told you anything about how the shooting took place, Byrd?
A. Yes, sir; he told me in a disconnected way about it.
Q. Who did he say shot first?
88 A He didn't say; didn't tell that.
Q. Did he claim that he killed Myers?
Col. CLAYTON. Hold on; if you want to contradict Byrd, you must lay the predicate.
Col. MARMON. He said for you to go up and get his coat; did he say there was any knives in it?
A. Yes, sir; he told me there was some knives in the pocket.
Q. You found four knives and three bottles of musk, you think?
A. Yes, sir; three or four.
Q. Did you turn them all over to the deputy marshal?
A. I did.
Q. You took the shotgun and turned it over to Byrd?
A. Yes, sir.
Q. Was there anything said there that night about dividing up the spoils or anything of that kind?
A. Nothing that I heard.
Q. Byrd didn't say anything about that, or anybody else?
A. No, sir; not that I heard.
Q. What became of Byrd? Did he stay there after he came back with you?
A. He did'nt come back with me.
Q. Who was at that house when you got there, at Byrd's house?
A. There was several parties there; I don't know who they were.
Q. Was Butler there?
A. I don't know whether he was or not.
Q. Was there any women there?
A. Yes, sir.
Q. Who?
A. I didn't know them by name.
Q. Do you know Dick Butler?
A. Well, if he comes before my face, and I hear him talk, hear his voice, I generally know he is Richard Butler, but to meet him here on the
89 street I couldnt say whether it was him or not.
Q. Do you know his wife?
A. No, sir; I prescribe for them, but I don't get acquainted with them.
Q. You do not know whether she was there or not that night?
A. No, sir.
Q. When did Martin Byrd get back?
A. I don't know whether he was there when I got there or not; if he wasn't he got there in a short time afterwards.

Q. Dansby made no statement to you about who shot him, did he?

A. Yes, sir; I asked Dansby if he knew the man who pulled the trigger and fired the shot that killed him, and he says, "That man out there on the porch." He said, "that's the man out there on the porch." I asked him who was out on the porch, and some one of the women or bystanders, I think about two, answered and said "John Boyd," but Dansby didn't answer me; they answered for him.

Q. Dansby did not answer that question?

A. No, sir.

Q. Dansby had been living up there a long time, had he not?

A. I don't know how long he had been living there.

Q. He knew John Boyd, did he not?

A. I don't know whether he did or not.

Q. Boyd has been in that community ten or twelve years, has he not

A. He has been in that community quite a while.

Q. Did you ever have any other talk with Dansby about it before he died?

A. No, sir. *A. No, sir.*

Q. Never asked him anything more about it?

A. No, sir.

Q. You say he told you to go and get his pistol and give it to
90 his father, and tell him to keep it until he died or as long as he lived and then give it to Jim?

A. Yes, sir. With your permission I would like to make a statement right there that he said relative to the reason why he dropped that pistol in the creek. He said it was for the reason that the pistol had been a pistol that had belonged to Abe, but he had bought it and paid for it, and he did not want it captured on him for the reason that some parties would think it was Abe's pistol.

Q. He told you to get the watch from Myers and throw the spring away?

A. Yes, sir.

Q. Give you any reasons for that?

A. None at all.

Q. You didn't ask him for any?

A. No, sir.

Q. I wish you would give us some idea of the time after you got there that he made this statement to you about having put it to him about right?

A. It was after I had examined John Dansby, made my diagnosis on him, and after I had examined John Boyd, and also made my diagnosis on him, gave him doses of medicine, and when I taken my saddle blanket off from my horse under the saddle and put it over John, it was after that; but as to the hour or minute I could not tell you that; I could not see the hands on my watch; there was no light out there, only the moonshine.

Q. It was some time after you made these examinations?

A. Yes, sir; I done all that I could do and I was waiting for daylight to go home.

Q. You have taken considerable interest in the prosecution of Abe Boyd, have you not?

A. I have not.

91 MARTIN BYRD, recalled by the Government:

Col. CLAYTON. You stated when you were on the witness stand before about a gun that these men had?

A. Yes, sir.

Q. I think you said it was a breech-loading gun?

A. Yes, sir; it was a breech-loading shotgun.

Q. What became of that gun?

A. After we had fetched John Myers and Mr. Boyd to Ft. Smith, Mr. Rigsby from the Cherokee Nation——

Q. You don't know whether he got it or not yourself, do you? Did you see him? What I want to find out is what you did with the gun yourself?

A. I fetched it down here and gave it to Mr. Pape, the U. S. jailor.

Q. The gun that you brought down here is the gun that you say these men had that night?

A. Yes, sir.

Q. That is the gun that Richard shot Boyd with?

A. Yes, sir.

Q. That is the gun they laid upon the boat?

A. Yes, sir; the same gun and a shot pouch.

Q. You brought that here and gave it to Mr. Pape, the U. S. jailor?

A. Yes, sir; I did.

Recross-examination:

Col. BYERS. By what authority did you bring him down here? Were you a deputy marshall?

A. I was not at that time; Mr. Toppins fetched him in.

92 Q. Are you a deputy marshal now?

A. Yes, sir.

Q. Did you have any conversation with Doctor Foyle that night after you went after him?

A. I just only told him that I wanted him to go up to my house and see what he could do for John Dansby; told him how it happened.

Q. Tell us what you did tell him.

A. I told him that John Dansby had got shot.

Q. Did you tell him who shot him?

A. Yes, sir.

Q. Who did you tell him shot him?

A. I told him John Boyd shot him, as well as I recollect; that was all I said, and I just rode on.

Q. Where was Doctor Foyle?

A. At his house.

Q. Was he in bed or out of bed?

A. He was in bed; I am satisfied I called him up.

Q. Did you ride away before he came out?

A. No, sir.

Q. Where did he come out to; did he come out through the door or out through the window?

A. He opened the door.

Q. How far were you from him at the time of this conversation?

A. I was at the gate in front of the house.

Q. Did you simply say to him to come down to your house and see John Dansby, John Boyd shot him; is that what you say now?

A. Yes; I remember of telling him that I wanted him to come up home and see what he could do for John Dansby.

Q. Did you say anything to him about any one else being shot?

A. I told him that John Boyd was shot.

Q. Did you tell him who shot John Boyd?

A. Yes, sir; I did.

Q. Who did you tell him shot Boyd?

A. Richard Butler.

Q. Did you tell him anything about Davis being shot?

93 A. Yes, sir; I told him I had killed one of them.

Q. You made that fact very prominent that you killed him, did you?

A. Yes, sir; I killed Davis.

Q. Do you know Bud Harris?

A. Yes, sir.

Q. Did you see him next morning?

A. I don't remember now where I seen Bud; but after going to Doctor Foyles I went to Ben Thompson's, and from there down to Tanda Walker's.

Q. Before you seen Tanda Walker didn't you see this man?

A. Which one?

Q. Bud Harris.

A. No, sir; I didn't.

Q. Didn't see him or have any conversation with him?

A. No, sir.

Q. When did you first see Bud Harris after this thing?

A. I went to Scullyville, was the first place; from there to Ben's; from Ben's to Tanda Walker's and Toppins', and from Toppins' right on home.

Q. Did you see Tanda Walker?

A. Yes, sir; I went to his house.

Q. You had a conversation with him?

A. Yes, sir.

Q. You didn't see Bud Harris at all?

A. I seen Bud; he was at my house.

Q. Is it not a fact you told Bud you would not make any statement until you saw Tanda Walker and had an understanding with them?

A. No, sir; Bud is the last man I seen; Dr. Foyle was the first.

Q. Then you had no further conversation with Doctor Foyle, further than the simple statement you wanted him to go up to the house and see Dansby?

A. He asked me what was the matter, and I told him what it was, so far as I recollect.

94 WILLIAM B. PAPE (sworn).

Col. CLAYTON. You are the U. S. jailer at this place?

A. Yes, sir.

Q. Do you know Martin Byrd?

A. Yes, sir.

Q. Please state if you remember the circumstance of the killing of John Dansby, and Toppins bringing him in prisoner in here.

A. Well, they brought John Boyd in a prisoner at night; it was after I had gone to supper.

Q. Please state if Byrd brought to you a shotgun.

A. Yes, sir; the shotgun wasn't brought right at the time they brought the prisoner—it was some time after that; I don'tremember just exactly how long.

Q. What did he do with the gun?

A. Well, he brought the gun in and turned it over to me.

Q. What became of the gun?

A. We turned it over to Mr. Rigsby, after he identified the gun.

Q. Where does Rigsby live?

A. At Dora, over here in Crawford County, right at the edge of the nation.

Q. How far from Van Buren?

A. About 4 or 5 miles, on the N. & A. V. Railroad, right near to it.

Q. Please state if there was a pistol turned over to you by any of these Byrds.

A. No, sir; there was no pistol turned over to me by any of them; there was a pistol that also belonged to Mr. Rigsby that was turned
95 over by William Mickle later on; that was after he captured Eugene Stanley.

Q. Was there anything else turned over to you by Mr. Mickle except the pistol?

A. No, sir; well, there was some money turned over afterwards; it was brought over here, and he would have left the money here, but it was Sunday, and he couldn't leave it here.

Q. Mr. Mickle was deputy-marshal, was he not?

A. He wasn't a deputy at that time that he made the arrest, but he was appointed directly after that.

Q. Who did he arrest?

A. Eugene Stanley; I don't think he was a deputy at the time that he arrested him.

Q. The pistol was turned over to you by Mickle after the arrest of Stanley?

A. Yes, sir.

Q. What became of that pistol?

A. I gave it to Mr. Rigsby.

Q. Did he prove it?

A. Yes, sir.

Col. GRACE. I suppose that would be hearsay.

Col. CLAYTON (to witness). Rigsby claimed it?

A. Yes, sir.

Q. Do you know anything of a watch?

A. Well, next morning after Boyd was brought in a prisoner, Mr. Toppins had a gold watch, and he said it was taken out of——

Q. Do not state what he said. Was the watch turned over to you?

A. Yes, sir.

Q. What became of the watch?

A. We gave that to Mr. Rigsby right there at the time.

Q. Did he claim that?

A. Yes, sir.

Q. Mr. Toppins handed you that watch after Boyd was brought in; of course, where he got that you don't know; we will have to prove that by somebody else?

A. Yes, sir.

96 Q. You turned over to Mr. Rigsby the gun that was given to you by Martin Byrd; you turned over to him the pistol that was given you by Mr. Mickle, and you turned over to him a watch that was given you by Mr. Toppins after Boyd was brought in here by Toppins?

A. Yes, sir.

Q. Was there any other property?

A. There was some clothing; that is over at my office now, tied up there, and some shoes, and some pocket knives.

Q. I want you to bring them over here, if you please.

A. Yes, sir.

Q. Some clothing, shoes, and pocket knives; who turned them over?

A. Well, the crowd that brought in John Boyd; Bob Toppins was the marshal in charge.

Q. Turned over by Toppin and his posse?

A. Yes, sir.

Q. These you have?

A. Yes, sir.

Q. Anything else that you now remember? Do you remember any bottles of anything?

A. Well, there was some cuff buttons, too, and there was a coat and vest that was on the dead man; that is there also.

Q. That were on Myers?

A. Yes, sir.

Q. You do not know it was taken from Myers; only what was said.

A. That is all; but then I have the coat and vest over there.

Q. That was turned over to you by Toppin, was it; or by whom was it turned over?

A. The way that was turned over to me was that Rigsby came there and claimed that, and said he wanted it——

Q. Came where?

A. There to the jail, while the dead man was there in the yard in the wagon.

Q. The dead man was there; you know that?

A. Yes, sir.

97 Q. The clothing was taken off of him there?

A. Yes, sir; that is, the coat and vest was.

Q. That was the dead man, Myers?

A. Yes, sir; so they say; I never knew Myers before.

Q. Toppins brought him in, did he?

A. Yes, sir.

Q. Now, he was dead then, was he not?

A. Yes, sir; he was dead.

Q. Did you turn that over to Mr. Rigsby, or keep it?

A. I kept it there in the office; it is there yet.

Cross-examination:

Col. BYERS. What time was this that they came there? What was the data of this fellow bringing this man Davis, or Myers, and John Boyd

there? I believe you say they came there at the same time, the dead man and the prisoner, Boyd?

A. I believe it was sometime in April, along there; I could tell exactly by looking in the book; I think the 7th day of April was the day.

Q. At what time did Mr. Rigsby come; how long afterwards?

A. He came on the next day. That was the 7th would make the 8th, 'long in the afternoon.

Q. What proof did you require from Mr. Rigsby that these things belonged to him? Did you require anything more than his statement?

A. That is all we required of him; we could have gotten his sworn statement, but we didn't think it was necessary.

Q. Did you know Mr. Rigsby before that?

A. Yes, sir; for some time.

Q. Where does he live?

A. In Crawford County, at Dora.

98 Q. What is his business?

A. He is a merchant there, and also postmaster.

Q. Then upon the strength of a familiar acquaintance with the man, and your estimate of the man, you took these things and turned them over without further proof?

A. Yes, sir.

Q. Do you remember who all there was in this possee of Toppins; that is, how many men he had with him, and who they were? You say Toppin was the deputy who brought them in?

A. You see when they were brought in I had gone to supper, and when I went back after supper the deputy marshal and his guard had left there, and they left the dead man there in the yard in the wagon, and I took John Boyd out of the old jail and took and put him in the new jail yet that night, and I don't remember just how many men there was with Mr. Toppins, but there was Martin Byrd and Bob Toppin and a man who was with him and who was a deputy marshal for some court, I don't remember which court, though; I know the man but I don't remember his name, and I think there was several colored boys, though I didn't know them.

99 JOE BYRD.

Col. CLAYTON. Your name is Joseph Byrd?

A. Yes, sir.

Q. You are a brother to Martin Byrd?

A. Yes, sir.

Q. Were you present the night that John Dansby and Myers were killed?

A. Yes, sir; I was there, for I staid there.

Q. Did you live with your brother?

A. Yes, sir.

Q. Now, then, please state who was at your house that night.

A. There was me and my brother, and Richard Butler, and Mr. John Dansby.

Q. You and your brother Martin?

A. Yes, sir.

Q. Do you know what Dansby was doing there?

A. He was there tending to the boat.

Q. Go on now and tell us what occurred that night; state whether or not you had been to bed.

A. Yes, sir; we was gone to bed when John Boyd and Stanley and Davis come there; it was about ten or eleven o'clock that night when they come there.

Q. What night?

A. Sunday night, between 10 and 11 o'clock.

Q. Go ahead. They came to your house?

A. Yes, sir; came there to the boat.

Q. Go on and state what occurred; everything about it.

A. When we went to the boat to cross them we asked them if they wanted across, and they said yes, wanted to cross and go to Scullyville. Davis was in the boat and he came out, and Stanley taken the shotgun and laid it in the boat and walked out.

Q. Davis was on the boat?

A. Yes, sir.

Q. Did he have a shotgun?

A. Yes, sir.

100 Q. The others were standing up on the bank?

A. Yes, sir; I and Richard Butler and Mr. Dansby.

Q. Davis brought the gun out of the boat; what did Stanley do with it?

A. Took it and carried it in the boat and came back where we boys was.

Q. Where was your brother Martin?

A. He was there fixing to take the chain loose.

Q. You were where?

A. I was up on the bank.

Q. Stanley put the gun in the boat and came back where you were?

A. Yes, sir; and he said, "you needn't be uneasy; we have only got but that one gun," and walked back up on the hill where we was, and Davis said they wanted to go over by Scullyville, and Martin put the key in the lock to open it, and Davis threw his pistol down on him, and said, "Give up that rusty change; we will cross ourselves," and about that time I walked down there to see what they meant by that, and about the time we turned our back Boyd shot Dansby in the back; Stanley shot at me, and I shot Stanley.

Q. You said something about them commencing fire——

A. After John Boyd shot Dansby, Davis shot at Martin, and he fell to his knees and shot Davis in the head.

Q. What did you do?

A. That is the time Stanley shot at me, and I shot Stanley.

Q. Where did you shoot Stanley?

A. Somewheres on the side; I never paid any attention where he was shot.

Q. Stanley shot at you, did he?

A. Yes, sir.

Q. Go on and state all that occur'ed, now.

A. After John Boyd shot, Richard Butler shot him.

101 Q. What did he shoot him with?

A. With a shotgun.
Q. Where was Butler?
A. He was in the boat where the gun was.
Q. What gun was it he shot him with?
A. With John Boyd's gun, I guess; they had it along with them.
Q. It was the gun that Stanley had taken from Davis and put in the boat?
A. Yes, sir.
Q. Richard Butler shot him with that?
A. Yes, sir.
Q. What did Boyd do then?
A. He run and hollered.
Q. Which way did he run?
A. He went up the creek.
Q. Go ahead and tell what occurred after that.
A. He went off on the other side and got to a bluff and he couldn't climb up, and we taken a boat down to him and brought him back.
Q. Who went down there after him first?
A. I and Martin and Simon Dansby and Jeff Campbell went after him first.
Q. When did Jeff Campbell come?
A. He come before we got down where John was.
Q. What did you do with Dansby?
A. Taken the old man Dansby to the house.
Q. Did you take him to the house before Jeff Campbell come?
A. Yes, sir.
Q. You took him to the house before you went after this man?
A. Yes, sir.
Q. Where was Martin?
A. Down there where John Boyd was.
Q. You have got that all mixed up.
A. Me and Richard taken old man Dansby to the house.
Q. Boyd ran up the creek and went across; did Martin follow him down there?
A. Yes, sir; he followed him down there.
102 Q. You and Richard carried the old man Dansby to the house?
A. Yes, sir.
Q. You came back?
A. Yes, sir.
Q. When did these men, Jeff Campbell and Simon Dansby, get there?
A. They come after we was starting down there, and they turned in and pulled the boat to the bank, and they went on down with us.
Q. After you got back from carrying old man Dansby to the house you found Simon Dansby and Campbell there?
A. Yes, sir; they was there before we got there; we put them on the boat and took them with us.
Q. When you got there you found them there; that is the first you saw of them?
A. Yes, sir.
Q. After going up to take Dansby to the house you came back again and found these two men there, and put them on the boat and went up the stream and got this man and your brother?

A. Yes, sir.
Q. Where did you find them?
A. Down there on the creek bank.
Q. Both on the same bank?
A. No, sir; John was on one side and Martin on the other side; Boyd was to a bluff and he couldn't climb it; he was wounded and just laying there on the bank; could not get up any further, for the rocks was too steep, and after we brought the boat down we took him to the house.
Q. Who did you put in the boat first?
A. We went and put Martin in the boat too, and then went on down where John Boyd was.
Q. You say you shot this man Stanley?
A. Yes, sir.
Q. Did he fall?
A. Yes, sir.
Q. When did you leave him?
103 A. After John Boyd was shooting and hollering there I just left Stanley there; he was laying down; I thought he was dead; when we came back we found he had snaked off with the two pistols; he was gone when we came back.
Q. You thought you had killed him?
A. Yes, sir.
Q. When you came back you found he had snaked off, and snaked off the pistols with him?
A. Yes, sir; he taken Davis' pistol with him.
Q. You say Stanley shot at you?
A. Yes, sir.
Q. You returned the fire?
A. Yes, sir.
Q. How close were you together?
A. We was about like you and me are now.
Q. It was in the night?
A. Yes, sir.
Q. Do you know how many shots you fired?
A. I shot three or four times.
Q. How many times did you shoot him?
A. I don't know how many times I hit him.
Q. Davis or Myers, whichever his name was, was killed?
A. Yes, sir.
Q. What became of Dansby?
A. He was to the house.
Q. You took him to the house?
A. Yes, sir.
Q. What became of him; he isn't there yet, is he?
A. No, sir; he is dead now.
Q. Died from this wound?
A. Yes, sir.
Q. Where was he shot?
A. Shot in the back.
Q. When you went down to get Boyd, down on the creek, did he say anything?

A. Yes, sir; when we put him in the boat Martin said, "What
104 did you mean by doing that?" He said, "By God, what in the hell do I care; that ain't the first man I have killed; it don't make a bit of difference to me."

Q. You took Boyd to the house, did you, also?

A. Yes, sir.

Q. Do you know how far your house is from the ferry?

A. It is about 100 yards, I guess.

Q. Jeff Campbell is the man you found there, is he not?

A. Yes, sir.

Q. Jeff Campbell and Simon Dansby?

A. Yes, sir.

Q. Is Simon Dansby any relation to John Dansby, the man who was killed?

A. Yes, sir.

Q. What relation?

A. Old man Dansby was his father; Simon was his stepson.

Q. Who was it fired the first shot?

A. John Boyd.

Cross-examination:

Mr. MARMON (att'y for def't. Boyd). How do you know he fired first?

A. I was looking at him when he shot him; I ought to know.

Q. Had your back to him, did you not?

A. No, sir; I saw John when he pulled his pistol out; I saw him when he shot.

Q. Did you not say you were all standing up there on the bank?

A. Yes, sir; but I wasn't looking only at one man, though.

Q. Did you not say you were standing on the bank, and as soon as you and Dansby turned your backs, and walked off——

A. We walked off towards where Davis and Martin was.

Q. You left John Boyd behind you?

105 A. Yes, sir; I see John when he shot.

Q. You walked off with Dansby, did you not?

A. I saw John Boyd when he shot.

Q. I know you are going to swear that. Did you not walk off with John Dansby?

A. Yes, sir.

Q. Then you walked off with your back to Boyd?

A. Yes, sir; and I turned around.

Q. How come you to turn around?

A. I turned around when he shot.

Q. You didn't see him shoot then, did you?

A. Yes, sir; I saw him shoot.

Q. You turned around a purpose to see him shoot?

A. Yes, sir.

Q. Martin has told you to swear this, has he not?

A. No, sir; I was right there.

Q. Do you swear now when you started off down there that you turned around with your face to John Boyd just in time to see him shoot?

A. I saw him when he shot.

Q. Do you swear you turned around facing John Boyd when you shot?
A. Yes, sir.
Q. You swear that?
A. Yes, sir.
Q. You had your face to him?
A. I saw him when he shot old man Dansby.
Q. You had your face towards him?
A. I saw him when he shot old man Dansby.
Q. Did you have your face to him?
A. Yes, sir.
Q. Then you had your pistol?
A. No, sir; I had a Winchester.
Q. Why didn't you shoot him?
106 A. I had no right to shoot him until he shot first.
Q. Did he not shoot first?
A. Yes, sir.
Q. Why didn't you shoot him?
A. Richard shoot him.
Q. Didn't you say he kept shooting right in the direction of you and Dansby?
A. It was in the night, we couldn't tell—
Q. You could not tell who did the shooting?
A. Yes, sir.
Q. You could not tell what? How could you tell who was shooting when it first commenced?
A. I saw Boyd when he made the first shot.
Q. You have made that statement a dozen times. Tell me how it is you could tell who it was that fired the first shot when you could not tell who fired the others?
A. I saw John Boyd when he fired the first shot.
Q. You have told me that a dozen times. How could you tell who fired the first shot if you could not see who fired the others?
A. He was the one that done the first shooting, and Davis was the second and Stanley was the third.
Q. When did you fire?
A. After Stanley fired at me.
Q. You were facing Boyd; you had your back to Stanley then?
A. No, sir.
Q. Wasn't Stanley down at the boat?
A. No, sir; Stanley was up on the hill, and I and Richard and old man Dansby.
Q. Stanley was up there?
A. Yes, sir.
Q. You had your back to Davis?
A. Yes, sir.
Q. How do you know he shot next?
A. I know he shot.
Q. How do you know it?
A. Because he fired.
Q. How do you know your brother didn't fire next?
107 A. I know he didn't.
Q. You didn't see him, did you?

A. Yes, sir.
Q. You turned around?
A. Yes, sir.
Q. You are a good man to turn?
A. Yes, sir.
Q. Just in time?
A. Yes, sir; I turned in time.
Q. You turned around. When you all walked off you didn't think there would be any shooting, did you?
A. We generally did not cross men that time of night.
Q. I didn't ask you that. You did not think there would be any shooting done when you and John Dansby walked off down to the river from the bank?
A. We didn't know what he meant by asking him that and he had his pistol out.
Q. You were watching Myers, were you not?
A. He had his pistol out. We didn't quite go down there where he was before John Boyd shot old man Dansby in the back.
Q. You say Myers pulled out his pistol, put it on your brother's ——
A. He had his pistol out when I got down there.
Q. Your attention was directed to him, was it not?
A. No, sir; after I saw him with his pistol I just turned around and came back on the hill where the resy of these boys was; before we got down there John Boyd fired.
Q. Your attention was directed to the man who had the pistol on your brother down at the ferry?
A. No, sir.
Q. What was you goind down there for?
A. We went down there to cross them.
Q. Did you not swear just now you went down there because you saw him get out his pistol?
A. We went down there to cross them before we knowed who they were.
108 Q. But at the time just before the shooting, when Myers had his pistol on your brother down at the ferry boat, when you left the bank up there and started down there was your attention not directed to him?
A. I just went down there to see what he meant.
Q. Then your attention was directed to him. Was you not looking at him?
A. Yes, sir.
Q. You didn't know what he meant by having his pistol out?
A. I just went down there and turned back; I didn't go quite down there before Boyd shot old man Dansby in the back.
Q. You were walking east towards the ferry?
A. I don't know whether it is east or west.
Q. You were walking away from Boyd, you and Dansby were walking together towards where your brother was?
A. Yes, sir.
Q. What were you looking at when you were looking down that way?
A. I just went down there to see what he meant by telling him to throw his chain down.

Q. How far were you away from where Davis was when the shot fired?

A. I was about like you are to me here.

Q. Then you turned and saw Boyd shoot?

A. Yes, sir; he was about like that gentleman there [pointing].

Q. He shot, and then you turned around in time to see Davis shoot at your brother once?

A. I never did notice Davis shoot at him, more than I saw him when he fired, and I saw Boyd when he shot old man Dansby.

Q. You saw Davis when he shot your brother?

A. Yes, sir.

Q. How far apart were these shots?

A. I couldn't tell; I never gave any count of them.

109 Q. Were they near together or far apart?

A. They were all about the same.

Q. You turned both times and saw both shots, and you know your brother didn't fire the first shot?

A. Yes, sir.

Q. How far was Myers standing from the boat at the time he was shot?

A. He was about like you are from me now.

Q. He was right at the edge of the water, then?

A. No, sir.

Q. He didn't fall right at the boat so you could not get a horse on it, then?

A. Yes, sir; he was right in the road, but not right at the boat.

Q. Who helped you and your brether move him?

A. I and Jeff Campbell and Richard Butler and Simon Dansby moved him out of the road; Martin crossed over the creek and let them know about it; we moved him up on the hill.

Q. Do you not know that he fell ten or fifteen steps south of that sycamore tree that you had the boat hitched to?

A. We moved him up.

Q. You and Martin Byrd and Simon Dansby and Jeff Campbell moved him, then?

A. Yes, sir.

Q. Your brother is mistaken if he says that just you and he moved him by yourselves, is he?

Col. CLAYTON. Never mind that.

The WITNESS. We moved him out of the way so he could pass and go across.

Q. (By MARMON). How far was Dansby from the boat when he was shot?

A. He was about like you and I from the boat.

110 Q. All about the same distance apart.

A. Yes, sir.

Q. I will ask you if you swore before the commissioner this: "Dansby was starting on the boat when the defendant shot him?"

A. I don't know whether I swore that; I don't keep any recollection of what I swear.

Q. Listen to this: "Dansby was starting on the boat when defendant shot him."

A. He was starting to the boat.

Q. When was it he said, "Money is what we want?" Was it before or after the shooting?

A. It was before the shooting was.

Q. Let's see: "Defendant shot Dansby." I will ask you if you swore this before the commissioner: "Defendant shot Dansby, and as soon as this occurred Davis said, 'Hold on, we do not want to cross; money is what we are after.'"

A. Yes, sir.

Q. That was after the defendant shot——

A. No, that was before he shot him.

Q. Did you not swear before the commissioner it was afterwards?

A. I told you I didn't keep any recollection of what we said at the first beginning.

Q. Did you not swear in that way before the commissioner?

A. They put it down; we didn't put it down; they might have made a mistake.

Q. You and your brother have talked a great deal about this thing, have you not, about this killing, about what you were going to swear to about it?

A. We didn't have no right to talk about what we already knowed.

Q. But did you do it?

A. I didn't; didn't have any right to tell anybody else.

111 Q. I say you and your brother have talked a good deal about it.

A. No, sir.

Q. Haven't talked about it at all?

A. No, sir.

Q. Do you swear that, that you and your brother never talked about this matter?

A. I didn't come here to swear that. We never talked about it.

Q. It was claimed there for awhile you killed Davis, was it not?

A. I don't know anything about it.

Q. Didn't you claim you killed Davis?

A. No, sir; I thought I had killed Stanley.

Q. Did you know him?

A. Yes, sir.

Q. How long had you known him?

A. That was the first time I had seen him; that night.

Q. It was a very bright moonlight night, was it?

A. It was light enough for me to know him.

Q. Was the moon shining?

A. No, sir; it was shinging enough for me. I would know him if it was 2 years from now.

Q. It was light enough for you to recognize him?

A. Yes, sir.

Q. You had known Boyd a long time?

A. No, sir.

Q. Had you ever seen him before?

A. Yes, sir; a couple of times.

Q. Did you speak to him when you went down there?

A. No, sir.

Q. You didn't recognize him?
A. I hardly ever be around him that much.
Q. Well, did you know him?
A. I had seen him passing around.
Q. Did you know him when you went down that night?
A. I didn't know him; my brother knowed him.
112 Q. How do you know it was him that done the shooting?
A. I knowed he was the man from the description of him now.
Q. No moon shinging; you didn't know him there that night; had never seen these other parties?
A. Yes, sir; but I knowed every one of them was there.
Q. Was there anybody else there besides these three, Myers and Stanley and Boyd?
A. That is all; just them three.
Q. It took you and old man Dansby and Joe Byrd and Butler to put them across the river?
A. They didn't wait until we put them across the river.
Q. You all went down there for the purpose of seeing them across?
A. Yes, sir; but they didn't wait until we put them across.
Q. Who was it that went over to old man Meeks's that night?
A. We didn't have no right to go over there.
Q. Who was it went over?
A. I didn't go.
Q. Did Butler go?
A. No, sir.
Q. He didn't?
A. No, sir; he didn't go nowheres. We all got up out of the house and went down there.
Q. About an hour before that where were you?
A. In the house there, asleep.
Q. What time did you go to your brother's?
A. I stays there; I didn't have to go there.
Q. What time did Dansby go there that night?
A. He come there that Sunday morning; staid all night there.
Q. What time did Butler come there?
A. He come there that Sunday morning.
113 Q. Staid there all day?
A. Yes, sir.
Q. Butler is a married man, isn't he?
A. Yes, sir.
Q. Was his wife there that night?
A. Yes, sir.
Q. Where did Butler go? Did he not go to old man Meeks's?
A. No, sir.
Q. Did your brother not send him over to old man Meeks's, and didn't you all have a talk about it when he came back from the boat the first time and tell him to go over and tell old man Meek to come and come quick and bring his gun?
A. No, sir; we didn't have to send for any guns; we all had guns.
Q. You didn't send nobody over there then?
A. No, sir.

Q. What did you have your guns there for?
A. We kept them on the place.
Q. How many did you have?
A. I had my brother's and my brother had a pistol.
Q. What did the other people have?
A. The old man Dansby had his Winchester.
Q. Was it ordinary or necessary for four of you to go down to the ferry to put men across?
A. We didn't never cross no men there at that time of night the reason we all four went down, for the neighbors did not never bother around after night, because we wouldn't cross them.
Q. How is it you went down there that night?
A. There was all four of us was the reason we went down there that night.
Q. What did you do with Butler's wife while you were gone?
A. We left her at the house.
114 Q. If your brother says she wasn't there he has forgot about it, has he?
A. I don't know what he said.
Q. She was at the house and staid there that night?
A. Yes, sir.
Q. Your brother saw her, did he not?
A. Yes, sir; I guess he saw her.
Q. Did you not all set right there in the house together.
A. We have got three houses.
Q. Did he not see her? Did you not eat supper together?
A. Yes, sir.
Q. You and your brother, and Adeline Butler, and these other parties; you all eat supper there together?
A. Yes, sir.
Q. If he wasn't blind he must have seen her?
A. Yes, sir; I guess he saw her.
Q. What time did they come there? Sunday morning?
A. Yes, sir.
Q. What time did you say this shooting occurred?
A. Between 10 and 11 o'clock; I guess about that time.
Q. When you went back after carrying old man Dansby up to the house you found Jeff Campbell and Simon Dansby down there?
A. Yes, sir.
Q. Where had they come from?
A. They had come from the house, I guess.
Q. How far did they live from there?
A. About a mile and a quarter, I guess.
Q. What were they doing there at that time of night?
A. They knowed we never shot on Sunduy; that is the reason they come down there.
115 Q. Is n't it a very frequent occurrence up there to hear people shoot on Sunday.
A. No, sir; we never do; at least, for us.
Q. It is a very frequent occurrence for people up there to go out on Sunday and kill squirrels, isn't it?

A. No, sir.
Q. Used to be before this last law was in force?
A. No, sir; not since I have been up there.
Q. As soon as they heard the shooting they come over, a mile and a half?
A. I am not sure it was a mile and a half.
Q. They heard the shooting, and before you could take old man Dansby up to the house and come back down there, and get the boat and go for Boyd, Campbell and Simon Dansby appeared?
A. They come after we taken him up to the house.
Q. When you got back down there you found them on the banks of that creek?
A. After we taken him up to the house.
Q. How long did it take you to take him up there?
A. I don't know exactly how long it was.
Q. Was it an hour?
A. It might have been.
Q. You swear to that?
A. No, sir; I won't, either.
Q. You can give me some idea about that?
A. You want me to state something that aint so; that is something I am not going to do.
Q. You can give me an idea?
A. I don't know what I am talking about when I do that. You needn't ask me any question I can not answer; I aint going to tell a lie about it.
Q. Do you know whether it was an hour or not?
A. I couldn't tell you; I never kept any account.
Q. Do you know whether it was a day?
A. It was in the night.
116 Q. Did it take you all night to take him up there?
A. No, sir.
The COURT. Make some estimate; give your best opinion; that is the best you can do.
Mr. MARMON. Give me a guess; I don't care what you say, either an hour or a week.
A. It was about half an hour, I guess.
Q. Where was Martin during that half an hour?
A. I don't know where he was at.
Q. You don't know where Martin was during that time?
A. He was there.
Q. Where?
A. Down on the creek.
Q. Was he there at the ferry?
A. He was down on the creek there.
Q. Was he about the ferry?
A. He was down on the creek.
Q. You were on the creek, wasn't you?
A. Yes, sir.
Q. You know where he was if you know anything about him at all?
A. I won't state how far he was from the creek.
Q. Was he about the ferry there, or was he up where Boyd was, or was he with you?

A. When are you speaking of?

Q. When you carried the old man Dansby from the place where he was shot up to the house?

A. He was down where Boyd was.

Q. When you came back you found Jeff Campbell and Simon Dansby there?

A. Yes, sir.

Q. You got them on the boat and started up the river?

A. Yes, sir.

Q. How did you know Boyd was up there?

A. Martin was down there with him.

Q. How did you know it?

A. We knowed him.

117 Q. Did you see the man from where you were?

A. No; I didn't see him; Martin was down there with him.

Q. How did you know he was down there?

A. I heard John Boyd hollering where Richard Butler had shot him.

Q. You knew by his hollering that Martin was down there?

A. Yes, sir.

Q. Because John Boyd was hollering you knew Martin was down there?

A. Yes, sir.

Q. You got into the boat and went up there, and you found Boyd there?

A. Yes, sir.

Q. Martin on one side; Boyd on the other?

A. Yes, sir.

Q. Which one did you take in first?

A. We put Martin on the boat first.

Q. Crossed then and got Boyd?

A. Yes, sir.

Q. What was it he said when you all asked him something.

A. We asked him what did he mean by it, and he said he didn't give a damn, it wasn't his first man he had ever killed.

Q. Is that his exact language?

A. Yes, sir; that is what he said.

Q. Didn't you say just now he says, "By God, what in the hell do I care; that is not the first man I ever killed?"

A. Yes, sir; he said that he didn't care.

Q. Do you think you can give us his exact language about it?

A. Yes, sir.

Q. How many times did you shoot?

A. I told you I never kept any account how many times I shot; I said three or four times I couldn't tell.

118 Q. How many times did Martin shoot?

A. I couldn't tell how many times he shot

Q. How many times did Boyd shoot?

A. He emptied his six-shooter.

Q. How do you know he did?

A. I know he did.

Q. How do you know he did?

A. One was empty when we found it.
Q. How many times did he shoot?
A. He shot ten or twelve times, I guess.
Q. How many times did Stanley shoot?
A. About three or four times, I guess.
Q. Stanley shot three or four times?
A. Yes, sir; three or four times, I guess.
Q. Boyd shot 10 or 12 times.
A. Yes, sir.
Q. How many times did Myers shoot?
A. I couldn't tell how many times he shot.
Q. How many times did Dansby shoot?
A. He didn't shoot any at all.
Q. How many times did Richard shoot?
A. He shot John Boyd twice.
Q. You don't know how many times Martin shot?
A. No, sir; I couldn't tell how many times Martin shot.
Q. Did you examine his pistol?
A. No, sir; I didn't examine his pistol.
Q. Did you examine Dansby's gun?
A. Yes, sir.
Q. You and Martin examined it?
A. Yes, sir.
Q. When did you examine it?
A. After we went to the house.
Q. What made you examine it?
A. To see if he shot any.
119 Q. Couldn't you ask him whether he shot or not?
A. We just wanted to look and see.
Q. You didn't know whether he shot down there or not?
A. I knowed he didn't shoot any.
Q. You wasn't sure until you went to the house and examined the gun?
A. After John Boyd shot him he hollered to John to please don't shoot him any more.
Q. Did he say that to John?
A. Yes, sir.
Q. He hollered, "John don't shoot me any more," or what did he say?
A. He said, "Please, John, don't shoot me any more," and John kept shooting. He knew it was John Boyd, and he hollered, "Please, John, don't shoot me any more."
Q. You swear he used that language?
A. Yes, sir.
Q. What time after you went to the house was it that you and Martin examined the gun?
A. I couldn't state about what time it was.
Q. How long was it after the shooting?
A. It was sometime that night.
Q. What time in the night, about?
A. It was about 2 o'clock, I reckon.
Q. Who else was present when you examined it?
A. There was so many mens, all the men there.

Q. Who helped you examine it?
A. There was so many, that is the reason I couldn't tell who all was there.
Q. You could give me one name, could you not?
A. I and Martin was there.
Q. Who helped you examine this gun to see whether it had been
120 fired or not?
A. I couldn't tell you.
Col. CLAYTON. He has told you that several times.
Mr. MARMON (to witness). That was about 2 o'clock in the morning. How did you happen to examine the gun?
A. Because we just whanted to look and see whether he shot or not; we taken the cartridges out.
Q. Just been cleaned out a short time before that?
A. Yes, sir.
Q. You didn't call anybody else's attention to it?
A. They were all right there in the house.
Q. You didn't call anybody's attention to it?
A. No, sir.
Q. You looked at it to see whether it was fired or not?
A. Yes, sir.
Q. Why did you want to find that out for?
A. We just looked at it to see whether he fired or not.
Q. If you were down there and knew he didn't fire any shot on the occasion, why was it you went to the gun and examined it?
A. Just wanted to look anyhow.
Q. You knew he didn't fire?
A. Yes, sir; I did.
Q. What was the use of looking at the gun afterwards?
A. I just wanted to look at it anyway.
Q. You say Dansby was there at the boat with you all?
A. Yes, sir.
Q. Isn't it a fact that these parties came there about 9 o'clock, about that time somewhere?
A. I told you I couldn't tell you whether it was between 10 and 11 o'clock——
Q. Let me finish asking my question. That they came there
121 about that time, and you were all gathered at Martin's house——
A. We didn't have any gathering 'bout it; we was right in the house, and old man Dansby and Richard Butler was right in the house, and I and Martin Byrd, and Martin woke us up, and we all went down there.
Q. You swear none of your crowd went to Jim MacGhee's that night?
A. No, sir; we didn't have nothing to go after.
Q. You didn't go?
A. No, sir; I didn't go.
Q. Didn't some of the crowd go?
A. No, sir.
Q. What was it Davis said when he pulled out his pistol on your brother?

A. He told to lay down that chain, hand out that rusty change, and he asked him what he meant by that, and before he could get the word out John Boyd shot old man Dansby.

Q. He said, "Lay down that chain and get out that rusty change?"

A. Yes, sir.

Q. How far were you away from him then.

A. I expect I was about as far as you is to I, down towards the creek.

Q. Did he say anything else?

A. When John Boyd fired, Davis fired at my brother.

Q. Did he say anything else there?

A. No, sir; I didn't hear it.

Q. Did he not say, "We will cross ourselves?"

A. Yes, sir; I couldn't tell all he said.

Q. You remember that other mighty well.

A. And then John Boyd shot——

Q. You thought you had killed Stanley, and just left him?

A. Yes, sir.

122 Q. What did you do just after you left him?

A. John Boyd was hollering and shooting there, so I went down there where him and Martin was and back.

Q. Was that before or after you carried the old man Dansby up to the house?

A. It was before.

Q. You went to where your brother was before you took the old man Dansby up to the house?

A. Yes, sir.

Q. Why didn't you tell me that a little while ago?

A. You went on talking, and I thought you knowed, so I wouldn't tell you.

Q. You went up to where he was?

A. Yes, sir.

Q. Where Boyd was?

A. Yes, sir.

Q. What was Martin doing?

A. He was down on the creek.

Q. You came back and carried the old man Dansby up?

A. Yes, sir.

Q. When you went back up there Stanley was gone with Davis's pistol and his pistol?

A. Yes, sir.

Q. Didn't you tell me all the way you knew Martin was up there was by Boyd hollering there?

A. You were talking; I thought you knew.

Q. I am not doing the swearing; you are doing the swearing.

Q. Then you know he was up there, because you had gone up there and saw?

A. Yes, sir.

Q. What made you swear the reason you knew he was up there was that you heard Boyd hollering? [No response.]

Q. Where is Butler's wife now?

A. I don't know where she is.

Q. Still out there in that country, isn't she?

A. I guess so.

123 Col. GRACE (att'y for defendant Stanley). How old a Byrd are you?

A. I am about 26 years old.

Q. When will you be 26?

A. I say I think I am about 26 years old.

Q. Are you more than that or less than that?

A. Somewheres about that?

Q. You don't know when you were 26?

A. No, sir.

Q. Are you 26 or 25?

A. I said I was about 26 years old.

Q. 25 is about 26, isn't it? It is next to it, isn't it? You don't know how old you are, do you?

A. I said I was about 26 years old.

Q. That is as near as you can get to it, is it?

A. Yes, sir.

Q. You don't know what your birthday is?

A. No, sir.

Q. Were you ever a witness before?

A. Yes, sir.

Q. Where?

A. Here.

Q. Before the commissioner?

A. Yes, sir.

Q. Any other time?

A. No, sir; no more than this time.

Q. You say you shot Stanley, here?

A. Yes, sir.

Q. Is he the first man you ever shot?

A. Yes, sir.

Q. You thought you had killed him?

A. Yes, sir.

Q. You felt glad then, didn't you?

A. No, sir; I didn't have any right to feel glad.

Q. How many times did you shoot at him?

A. I couldn't tell you how many times I had shot at him.

Q. You know when you shot him first with the pistol, do you not?

A. Yes, sir.

Q. After he was down, you kept banging away at him, did you?

124 A. I shot three or four times; I never kept any account.

Q. You would just as leave shoot a dead man as a live one, wouldn't you?

A. No, sir.

Q. Anyhow, you can not tell how many times you shot at him after he was down?

A. No, sir.

Q. You went on to where John Boyd was?

A. Yes, sir; up the creek.

Q. When you were shooting at Stanley how far off were you?

A. I was about like I and you is.
Q. What were you shooting?
A. Shooting Winchester.
Q. The first shot he fell?
A. He did; yes, sir.
Q. Then you kept shooting away; you can not tell how often?
A. No, sir.
Q. But you left him for dead and went on?
A. Yes, sir.
Q. Came back and he was gone?
A. Yes, sir.
Q. You say he took the pistol with him?
A. Yes, sir; he took Davis's pistol with him.
Q. How do you know?
A. Davis fell with his pistol, and Stanley had his pistol when he fell.
Q. That makes you know he took Davis's pistol?
A. Yes, sir. When we came back the pistol was gone.
Q. You are guessing at it?
A. Stanley took the pistol.
Q. You swear just as hard about things you don't know as things you do. You don't know whether he took it or not?
A. There was nobody there but him when we went off.
Q. That is a guess again.
Col. CLAYTON. No; it is not. It is a proper inference.
125 Col. GRACE. The witness is not the proper one to draw inferences; that is for the jury. (To witness.) Now, Mr. Byrd, who was it shot first, you or Stanley?
A. Stanley shot first.
Q. He isn't much of a marksman. Which did he shoot with; a Winchester or a pistol?
A. Stanley had a pistol.
Q. Just shot so as to miss you?
A. Yes, sir; shot before I did.
Q. Shot at you because he saw you standing there with a Winchester; and he shot so you could kill him, did he; shot so as to sort of irritate you and make you shoot him; that was it, was it? [No response.] Why didn't you go up and get his pistol?
A. I didn't have any right to take his pistol away from him.
Q. You stand on your rights pretty much. When you saw this other fellow hold his pistol over your brother why didn't you give your attention to him?
A. I didn't have any right to pay attention to him when these others were up there.
Q. You thought you would shoot a man that was nearer to you?
A. Yes, sir.
Col. CLAYTON. The one that was shooting at him?
Col. GRACE. (To witness.) The one that didn't shoot until you shot?
A. He shot twice before I shot at him.
Q. You wanted to see whether really he could hit you, did you, before you fired?
A. No, sir.

Q. Isn't that the first time you ever told any human being that he shot twice at you?

A. Yes, sir; that is the first time I ever told that he shot twice at me.

Q. You just wanted to see whether he could hit you or not?

A. It was in the night when he was shooting; I couldn't tell
126 anything about it.

Q. Why didn't you wait until he shot again?

A. I didn't have no right to wait.

Q. You saw he couldn't hit you?

A. No, sir.

Q. Are you acquainted with a man named Emory?

A. No, sir; I don't know anything about that man.

Q. Do you not know Will Emory?

A. Yes, I know him.

Q. How many of you were there that went down from the house to the ferry?

A. There was me, and my brother, and Richard Butler, and old man Dansby.

Q. How many arms did you have, and what kind of arms?

A. I had a Winchester, and old man Dansby had one; my brother had a pistol.

Q. Did your brother also have a pistol, and also a Winchester—is it not a fact that he had a Winchester and pistol both?

A. He had a Winchester, but I had it. Richard Butler didn't have anything.

Q. I believe you say you were about as far from Stanley as from me to you.

A. I said about that far, I guess.

Q. I will ask you, Mr. Byrd, if you know a party by the name of Amanda Clark?

A. No, sir; I don't know anything about Amanda Clark.

Q. You are not acquainted with her?

A. No, sir.

Q. Do you know Sylvester Freeman?

A. No, sir.

Q. Did you ever see him?

A. I may have saw him; I don't know him; I ain't acquainted with these people much.

Q. Sylvester is a woman; you never saw her?

127 A. No, sir; I don't recollect of seeing her.

Q. Lives about ten miles out here in the bottom—Poteau bottom. Did you ever see either one of them out there?

A. No, sir.

Q. I will ask you, Mr. Byrd, if you were at their place; if you didn't go there and say to them recently after this shooting—soon after the shooting—and state that Martin Byrd shot Dansby?

A. What did he have to shoot old man Dansby for?

Q. Didn't you say that?

A. No, sir; I didn't tell them any such.

Q. Also, he was between them and Boyd; that if he had got to kill Boyd he would have got $100.00; that you didn't try to arrest them, but went down there to kill them.

A. Went down to kill who?
Q. These parties at the ferry. You went down there to kill them.
A. What right had we to kill them?
Q. None in the world, sir.
A. We went down there to cross them.
Q. Didn't you also say you disarmed Stanley and Boyd before there was any shooting done?
A. No, sir; we didn't do any such.
Q. Didn't you punch Stanley in the side with your Winchester before there was any shot fired?
A. No, sir; they didn't give us any time.

Redirect examination:

Col. CLAYTON. You say you do not know this woman Amanda Clarke and Sylvester Freeman?
A. No, sir.
Q. You never had any such talk with them?
A. No, sir.
128 Q. You say that you thought you killed Stanley here, and after Boyd had run up the creek you heard him hollering there, and you run up too?
A. Yes, sir.
Q. You left him and run up the creek after Boyd, and left Boyd and your brother there when you came back?
A. Yes, sir.
Q. How far up the creek did you go?
A. About 150 yards.
Q. After this shooting was over you went 150 yards up the creek to where Martin and this man was?
A. Yes, sir.
Q. How long did you stay there before you came back?
A. I just went down there and right back.
Q. You then came back 150 yards; that would be 300 yards; and then you got Dansby and carried him up to your house; that was 100 yards, you say; what did you do with him when you got to the house?
A. We put him in the house.
Q. Then you went back 100 yards, or 150 yards it is, from the ferry to the house; to the house and back again would be 300 yards, which would make 600 yards——
A. I guess it would be that——
Q. That you must have travelled anyhow after he was shot?
A. Yes, sir.
Q. How many pistols did he have?
A. John Boyd had two pistols; he had one around him when we got to him, and there was one in the water where we took him at.
Q. Did you get that one out of the water?
A. Yes, sir; we have got it right here now.
Q. What did you do with it?
A. We taken it to the house.
Q. Is it at the house yet?
A. We have got it here now in town.
Q. Who brought it here?

A. I did.

129 Q. When?

A. When I come.

Q. Where is it?

A. It is over here in the wagon yard.

Q. You got the pistol out of the water?

A. Yes, sir.

Q. How far was it from the bank?

A. It was just by where we got John out of the water at.

Q. When you went up there that night to get John Boyd was he standing in the water?

A. He was laying down on the bank; one part of him was in the water, and he was holding out.

Q. I want you to bring that pistol over here to-morrow and give it to me.

A. Yes, sir.

Q. You got the pistol and you brought it here?

A. Yes, sir.

Q. You have got it with you?

A. Yes, sir.

Q. You can produce that to-morrow, can you?

A. Yes, sir.

Q. What kind of a pistol was it?

A. A 44 Colt's.

Q. Did it have any cartridges in it?

A. It had hulls in it when we took it out of the water.

Q. Anything else but hulls?

A. No, sir.

Q. How many hulls?

A. 6. And the one he had around him he had loaded it.

Q. When you captured him it was loaded?

A. Yes, sir.

Recross-examination:

Col. BYERS. You wouldn't have brought that pistol up if you had known Clayton was going to take it away from you?

A. No, sir; I had a right to bring it here.

Mr. MARMON. Why didn't you give it to Tanda Walker when

130 he brought an order for it?

A. We didn't have no right to give it to Tanda Walker; it belongs to the Government; Tanda aint the Government.

Q. Why didn't you turn it over to the Government?

A. I was keeping it until they called for it.

Q. You were just going to keep it until they called for it; you wouldn't give it up on an order from Mr. Boyd, here?

Col. CLAYTON. Boyd did give the order for it?

Col. MARMON. That is my understanding.

Col. CLAYTON (to witness). Tanda Walker presented an order to you for it, purporting to be from Boyd?

A. No, sir; he didn't send none from him. He didn't say nothing about John sending the order; he claimed he had bought the pistol. John Boyd didn't send any pistol order; didn't send no order for the pistol.

Mr. MARMON. I was mistaken about that.

Col. GRACE (to witness). You never brought the pistol down here before this time?

A. No, sir; I never brought it before the commissioner.

Q. Never turned the pistol over to the officers of the Government?

A. No, sir.

Q. Never said anything about it until now?

A. Yes; they knowd all about it.

Q. Old man Toppins got the other one?

A. Yes, sir.

Q. What kind of a handle has this one got?

A. I never noticed what kind of a handle it has.

Q. I will ask you if you didn't take Stanley's pistol from him before there was any firing done up there?

A. No, sir.

131 Q. If that isn't Stanley's pistol you have got in the wagon yard here?

A. No, sir; Stanley taken his pistol and Davis's pistol when he went off that night.

Q. You wasn't there when he went off. You have got Stanley's pistol now, have you not?

A. No, sir.

Q. What kind of handle was in it?

A. It has got a gutta-percha handle.

Q. You said while ago you didn't know.

A. I thought you knew, and would wait until you told me.

Q. You know what kind of a handle it has in it?

A. Yes, sir.

Redirect examination:

Col. CLAYTON. Did you bring any of these other things down here except the pistol?

A. No, sir; that is all I brought.

Here court adjourned until morning.

132 (Carbary's "D.")

OCT. 25, 1890—8:30 a. m.

W. B. PAPE recalled.

Col. CLAYTON. Examine those clothes. You testified with regard to some clothing taken from Davis, the dead man?

A. That is the coat and vest I had taken off of Myers when he was lying in the wagon in the yard dead.

Q. You took all of these after he was dead and while he was there in the jail yard?

A. Yes, sir.

Q. You spoke of some knives and tricks turned over to you [showing knives].

A. Well, they were brought in by a party and left with the deputy jailer at night, and there was one other knife that John Boyd claimed as his, and he asked me to give it to his wife. It was an old knife, and I gave it to his wife.

Q. There are three. Were there any others?

A. Only 4 turned over to me.

Q. These were turned over to you: 3 knives, 3 sets of cuff buttons, a spoon, soap, a fine-tooth comb, a match safe containing matches, a tooth brush, a cartridge, and a box and salve?

A. Yes, sir.

Q. That is a bone-handled knife, is it not?

A. Yes, sir.

Q. Take that and examine it [gives a sack containing clothes to witness].

A. Well, this sack was brought in just as it is here, and I put it away, and it has never been gone through only when Mr. Rigsby came
133 there. I showed it to him. It contains some dirty clothes and some clean clothes and a pair of shoes or boots.

Q. They were in this sack?

A. Yes, sir. That is a shirt you see tied up that way like a sack (witness takes out of the sack one pair of pants, two striped shirts, two drawers, a pair of shoes, a pair of boots), and that is the coat and vest that was taken from the body of the dead man.

Q. These were turned over to you?

A. Yes, sir.

Q. That is the sack of clothing you spoke of?

A. Yes, sir.

Q. They were turned over to you by Martin Byrd and Tippen?

A. Yes, sir.

Q. I will formally introduce these things in evidence, and make further proof on them after awhile.

Cross-examination:

Mr. BYERS. You have had them in your possession ever since they were turned over?

A. Yes, sir.

Q. Did you not say some one had handled them?

A. Mr. Rigsby next day, when he was notified of the arrest of Boyd—

Q. Did Rigsby look at those knives?

A. Yes, sir; and looked at the clothing; in fact, he wanted to take them and also the coat and vest, and I told him no, I would hold them until the case was disposed of and then he could get them.

Col. CLAYTON. I see that is the top of a box of salve. I thought it was a checker.

JOSEPH BYRD.

Col. CLAYTON. Yesterday you said that you found a pistol in the water. Is that it [handing a pistol to witness]?

A. Yes, sir.

134 Q. You brought it here this morning?

A. Yes, sir; that is the pistol.

Q. State if you saw these men bring anything with them or have anything with them down there at the ferry.

A. Yes, sir.

Q. Those clothes they had with them, how were they when you got them?

A. In a sack—a kind of a satchel. John Boyd had it on his shoulder and he taken it off and set it on the ground.
Q. These are them, are they?
A. Yes, sir.
Q. You looked into them?
A. Yes, sir.
Q. I thought it was a sack?
A. Yes, sir; it is a shirt; that is the way they had them tied.
Q. And he had it over his shoulder?
A. Yes, sir.
Q. It was tied that way when you got it?
A. Yes, sir.
Q. And this part over his shoulder?
A. Yes, sir.
Q. These things were in it?
A. Yes, sir.
Q. I will introduce the pistol.

Cross-examination:

Mr. BYERS. Who had the sack?
A. John Boyd.
Q. Was he carrying it?
A. Yes, sir; he had it on his shoulder, and he taken it off and set it down on the ground.
Q. At what time did he set it down?
A. I couldn't tell.
Q. Was it before the shooting or after?
A. Before the shooting.
Q. Was it setting down on the ground before you got there, or did he have it on his shoulder?
A. Yes, sir; on his shoulder when I got there.
Q. How far from this fire was it he set it down?
A. About as far as from I to you.
135 Q. Who built that fire there?
A. Wasn't any fire down there.
Q. Didn't you just now tell me it was about as far as from me to you?
A. No, sir; they didn't have any fire down there.
Q. You are positive about that?
A. Yes, sir.
Q. That they did not build a fire?
A. Yes, sir; wasn't any fire down there.
Q. Whose pistol is that?
A. John Boyd's pistol.
Q. When was the first time you ever saw that pistol?
A. The first time I saw it is when I got it out of the water.
Q. You say it had no bullets in it when you got it out of the water?
A. Nothing but shells.
Q. Who cleaned it up so nice?
A. I did.

Col. CLAYTON. Do you know whether or not these are the clothing Davis had on him?

A. These clothes we pulled off Davis after we brought him here.
Q. Do you remember the vest; any particular marks on it?
A. Yes, sir; it has got a striped piece in the back.
Q. A new piece?
A. Yes, sir; a piece put in there.
Q. No bullet holes in these clothing?
A. No, sir; I didn't notice particular.

WILLIE MICKLE.

Col. CLAYTON. Where do you live?
A. In the Territory.
Q. State if you have been a deputy marshal.
A. Yes, sir.
Q. Do you know Standly, the defendant?
A. Yes, sir.
Q. State if you arrested him.
A. Yes, sir; I arrested him along in April; I think it was along about the last, as well as I remember.
Q. Where did you arrest him?
A. 6 miles west of Red Oak.
136 Q. Where is Red Oak?
A. Gaines County, in the Nation; Choctaw Nation.
Q. How far from here was it you arrested him?
A. I don't know exactly; about 65 miles; no, not that far, about 45, I reckon.
Q. What did you do with him?
A. Brought him to Fort Smith, and he got away from me.
Q. He escaped from here before you got him in jail?
A. Yes, sir; I had him at the hotel when he got away.
Q. State if you found any property on his person.
A. I found some property; I found a gold watch and a six-shooter and $170 in money.
Q. What did you do with the money?
A. I turned it over, some of it, to Mr. Williams, and the last of it to Mr. Pape.
Q. Who is Mr. Williams?
A. Deputy marshal.
Q. You turned it over?
A. Yes, sir.
Q. What did you do with the pistol?
A. I turned that over to the jailor, too.
Q. Mr. Pape?
A. Yes, sir.
Q. What did you do with the watch?
A. I turned it over to Bob. Monroe, and he turned it over to Taylor.
Q. Were you present when he turned it over to Taylor?
A. No, sir.
Q. What Taylor?
A. John Taylor, judge.
Q. You arrested him up in the Choctaw Nation about 45 miles, you think, from Fort Smith?
A. I think it is, maybe farther.

Q. You found money and this gold watch and a pistol on him, and you gave the pistol to Mr. Pape?

A. Yes, sir.

137 Q. And the watch you turned over to Bob. Monroe?

A. Yes, sir.

Q. Were you present when he turned that over to Mr. Taylor?

A. No, sir.

Q. Then you don't know. Bob Monroe is a police officer in this town?

A. Yes, sir.

Q. The defendant got away from you?

A. Yes, sir.

Q. That is all you found on his person?

A. That's all; yes, sir.

Q. He escaped you?

A. Yes, sir.

Q. What were you doing with him at the hotel?

A. I was going to keep him until daylight and put him in jail.

Q. You got in here in the night time?

A. Yes, sir; I was afraid I could not get him in the jail at night time; I didn't know; I wasn't any officer at the time; I was just arresting him for the reward.

Q. You knew there was a reward for him and you arrested him?

A. Yes, sir.

Q. And you brought him in and he got away from you?

A. He got away from my guard; the guard was asleep.

Q. Who was the guard?

A. A man by the name of English.

Q. That was the latter part of April?

A. Yes, sir; or the first of May.

Cross-examination:

Col. GRACE. You arrested him for the reward?

A. Yes, sir.

Q. Did you get it?

A. No, sir; well, I got $20, too. Taylor paid $25 for his watch.

Q. Was there a reward offered by Taylor?

A. Yes, sir.

Q. When did you hear of the reward first?

138 A. I heard of it several days before; I seen it in the paper. I wasn't sure I had the right man; I was arresting him on what Hall had told me.

Q. You heard several days before about the reward?

A. About 3 days, I suppose; may be not so many.

Q. Anybody with you when you arrested him?

A. Nobody right at the house; my cousin was out at the fence—a young fellow.

PADEN TALBERT.

Col. CLAYTON. Are you a deputy marshal?

A. Yes, sir.

Q. State if you arrested Standly here.

A. Yes, sir.
Q. When and where?
A. At Spadra, Johnson County, Arkansas, on June the 23rd, I believe.
Col. GRACE. I want to ask Mr. Mickle another question.

(Mr. MICKLE is recalled.)
Col. GRACE. Mr. Mickle, was Standly wounded when you arrested him?
A. Yes, sir; shot in the left shoulder.
Q. Show on me where he was shot.
A. [Witness indicates on attorney's person where wound was.] The doctor said the ball was in him somewhere. I think it was right about there.
Col. CLAYTON. You said Taylor paid you for the watch?
A. He paid Mr. Monroe and Monroe paid me.
Q. For recovering the watch?
A. Yes, sir.
Col. GRACE. You don't know what reward Taylor paid Monroe?
A. Yes, sir; $25, and I gave Monroe $5.

PADEN TALBERT recalled.
Col. CLAYTON. When did you arrest him?
A. June 23rd, I think.
139 Q. June last?
A. Yes, sir.
Q. What name was he going by when you arrested him?
A. Robert Haines.
Q. State if when you arrested him he had upon him anything you took from him.
A. He had two letters I got from him after I got back to Clarksville and put him in the county jail, and in searching him I found two letters.
Q. Would you know the letters?
A. Yes, sir.
Q. Look at these two letters and see if they are them; the envelopes I will try and get them for you; I have mislaid them.
A. [Examining letters]. This letter I got off Standly, but this one, I don't know where I got that one; this is the letter I think that Mr. S. A. Williams gave to me before I arrested him.
Q. That letter you got off his person?
A. Yes, sir.
Col. CLAYTON. He got the letter marked "B" from his person. (To witness.) He only had one letter then?
A. He had two; he had a letter he received from some party.
Q. Did you take anything else from him but letters?
A. No, sir.
Q. Any pistols or guns?
A. No, sir.
Q. That is the only thing you took from him?
A. Yes, sir.
Q. Let me see the letter, please. Do you remember to whom the envelope was addressed?
A. To Miss Jennie Tidford, at Jenny Lind post-office.

Col. GRACE. You arrested him at Spadra?
A. Yes, sir.
Q. When was that?
A. The 23rd of June last, I think.
Q. Did you have a warrant?
A. Yes, sir.

140 W. D. PAPE recalled.

Col. CLAYTON (handing letter to witness). Examine that letter and tell me if you ever seen it before?
A. Yes, sir; I saw that before.
Q. Where did you see it?
A. Well, there was a man brought it to me over there at the jail one afternoon.
Q. I will mark this letter "C." Who brought it to you?
A. Mr. Pemerton, J. K.
Q. A deputy marshal?
A. Yes, sir.
Q. Was that before or after Standly was arrested the last time?
A. Before he was arrested the last time.
Q. What did you do with it?
A. I took it over to the marshal's office. I saw on the instant what it meant and who it was wrote the letter; I saw the point in it, because I had found out about this horse that was down at Dyer's and had notified him where his horse was, and he had gone after his horse and got the horse and wrote to me that he had.
Q. You used this letter for the purpose of finding out—locating this man. Mr. Talbert went down and arrested him?
A. Yes, sir.
Q. State then fully about this letter.
A. I took the letter over to the marshal's office and turned it over to Col. Yoes. I told him what it meant and how I knew.
Q. How long was that before he was arrested?
A. It was some, I suppose, 3 or 4 weeks.

Cross-examination.

Col. GRACE. How did you get this letter? A. Deputy marshal
141 Pemerton brought it over there to me just as you see it without any envelope at all.

Col. CLAYTON. Take that letter and these cards and state if you have ever seen that letter before and if you know in whose handwriting it is.
A. That is Eugene Standly's writing. I have seen the cards, the letters. These are orders I have paid off.
Q. I will mark this letter "D."
Col. GRACE. I object to those other papers; he can't introduce them when they are foreign to the case.
Col. CLAYTON. I will introduce this paper also for an other purpose. It will be apparent when I read it.
Col. GRACE. Well, they are not in evidence yet?
Col. CLAYTON. No, sir; I will say the letter marked "D" is in Standly's handwriting. (To witness.) Please look at these two letters and state if you know the handwriting of those letters.

A. These, I would say they are the same handwriting exactly. This letter though, that Paden Talbert took off the person of Standly——

Col. GRACE. You don't know that. You are guessing at that.

Col. CLAYTON. You need not state that. You take it to be the handwriting of Eugene Standly?

A. Yes, sir; I would think it was the same handwriting.

Q. Where did you get this letter, this one addressed in this envelope?

A. Well, it was sent to the office there from the jail.

Q. I will ask you if you have occasion to see Standly's handwriting frequently or not?

A. Yes, sir.

Q. There are two papers you say are orders. Who handwriting are they in?

142 A. Standly's. They are orders that I paid money on.

Q. I want to introduce this letter.

Col. GRACE. He does not say he saw him write it.

Col. CLAYTON. I introduce it, marked "D," addressed to "Mrs. M. E. Standly, Atoka, Ind. Ter."

"Mrs. M. E. STANDLY:

"DEAR MOTHER: Your kind letter——

Col. GRACE. We object to it.

The COURT. I think it is competent. It goes to the jury for what it is worth, just like a partial admission—not wholly, but an admission that is indirect in its effects.

Mr. MARMON. That does not effect Boyd in any way.

Col. GRACE. We save the exception.

Col. CLAYTON (reading letter):

"FORT SMITH, ARK., *August 6th*, 1890.

"Mrs. M. E. STANDLY:

"DEAR MOTHER: Your kind letter in cpr. of Mr. J. C. Byers was received some time ago. You want to know what became of all of my money. The parties that arrested me Atoka took $170.00 from me. It was turned over to the court here, and I have never got it yet. I had in all about $18 when I was arrested the last time. My wound is healed up, but still pains me at times. I have not employed Mr. Byers to defend me. I want to get a lawyer with some influence. Think I can beat the murder charge against me on jurisdiction. I have never received a letter from Cousin Norma yet. Guess she has never written. You can send me a box of something to eat if you like. I have never received but

143 one letter from you, except the one in care of Mr. Byers. Received it when I was first put in jail. With much love to you, brother, and sister, I will close for this time.

"Affectionately, your son,

"EUGENE STANDLY."

Col. CLAYTON. That is marked "D;" I will mark the envelope "D," too.

S. A. WILLIAMS.

Col. CLAYTON. Take that letter marked "D," then take the two letters marked "C" and "B"—you have examined them before—and tell me if they are all in the same handwriting.

A. My opinion is they are in the same handwriting; yes, sir.

Q. What is your business?

A. Chief clerk and chief deputy in the U. S. marshal's office.

Q. Have you ever been deputy clerk of this court?

A. Yes, sir; some 14 years.

Q. Were you not clerk of the county court?

A. Yes, sir.

Q. How many years?

A. Some 4 years.

Q. You are familiar with different handwrites?

A. Yes, sir.

Q. I will ask you if you can detect or are able to tell a man's handwriting by comparison after you have seen it?

A. By comparison, yes, sir; I think so.

Q. You have said these letters are all in the same handwriting?

A. Yes, sir.

Mr. GRACE. You never saw him write any?

A. No, sir.

Q. You only form your opinion by comparing it with the other letters?

A. Yes, sir.

Col. CLAYTON. I will read the one of May 17th:

144 "SPADRA, ARK., *May 17th*, 1890.

"Mr. DYER:

"DEAR SIR: I have had some hard luck since I saw you last. I fell in with two old chums of mine. We hadn't been together more than two weeks when some parties tried to arrest us. We had a right sharp little fight; one on each side was killed. I was badly wounded in the right shoulder. The people think that I was the one that was killed. I saw in the Fort Smith Elevator that the dead man proved to be George Myers, an escaped convict. I am glad they think so. Well, Mr. Dyer, I am needing some money very bad, and if you want that mare of mine you can have her and the saddle that Will Johnson has got of for $50.00. Write me whether Mitchell was ever suspicioned of being the one that took those horses. If you take a notion to give me that much for the mare, send the money by express to Spadra, Ark. Write soon.

"Resp.,

"GEORGE MYERS.

"Address, Robert Haynes, Spadra, Ark.

"P. S.—If you can't send $50.00, send as much as you can."

Col. CLAYTON. I will now read the one marked "B:"

"SPADRA, ARK., *June 17th*, 1890.

"Mr. JAMES NAPIER:

"DEAR JIM: Your kind letter was received this morning. I have been looking for you every since the 14. I thought you had failed to

get out when you expected. I don't believe you know who I am. It is Eugene S. Jim, I will send you some money, and want you to come down here as soon as you can. I have got something spotted for us. Bring your pistol; I have got a good one. I would come up there but don't think it would be a good idea. Jim, old fellow, I have got lots to tell you when I see you. Did you hear about George Myers getting killed? I was with him when he got killed. I got badly shot
145 myself. Jim, now be sure and come. I will go back up there with you at any time. Come just as soon as you get this letter. Buy you a ticket to Spadra.

"From your friend,

"ROBERT HAYNES.

"Get off the train at Spadra, and go to the post-office, and ask where John Mathers lives, and go to his house. I am living with him. Be sure and come. You can find the place without any trouble."

Col. CLAYTON. I believe I will pin these two letters together so as not to get them lost.

F. M. RIGSBY.

Col. CLAYTON. Where do you live?

A. Dora, Crawford County.

Q. I will ask you the question if you know either one of these defendants, Boyd or Standly?

A. I am not personally acquainted with them.

Q. Have you ever seen them?

A. Yes, sir; seen them both.

Q. I desire to ask you if you know anything about a gun that is said to have been taken from these men on the night of the fight?

A. There was a gun turned over to me.

Q. Who turned it over to you?

A. Martin Byrd turned the gun over at the office. I sent an order for it.

Q. Sent an order by whom?

A. My boy.

Q. What is his name?

A. Josiah.

Q. Had you seen it before you sent the order for it?

A. Not since it had been taken from me.

Q. State if he brought the gun to you.

A. Yes, sir; he did.

Q. Whose gun was it?

A. My gun.

Q. What kind of a gun?

A. A breech-loading shotgun.

146 Q. Double-barreled?

A. Yes, sir; No. 12 calibre.

Q. State when it left your hands—when it was taken from you.

A. On the 5th day of last April.

Q. This killing occurred on the 6th. It was upon the 5th day of April it was taken from you. What time of day?

A. Just about dusk.

Q. Was it loaded?

A. I don't know; they taken it off my son's shoulders as he walked in the house.

Q. I will ask you the circumstances of the taking of that gun, and who got it?

A. My son had been out hunting and he came in between sundown and dark, or about dusk, and walked in the door with the gun on his shoulder.

Col. GRACE. Were you present?

A. Yes, sir.

Col. CLAYTON. There was something occurred before that?

A. Yes, sir.

Q. Tell the whole thing; commence at the first—hold on, I have concluded to pursue another course. The gun was yours?

A. Yes, sir.

Q. Look at those clothing, that coat and vest.

A. I know the coat and vest.

Q. You know the coat and vest offered in evidence? How do you know it?

A. They belong to me; I pulled them off at the muzzle of a pistol or two.

Q. Have you ever seen them since you pulled them off at the muzzle of a pistol or two?

A. Yes, sir.

Q. Where did you see them?

A. The next time I seen them they was on a man was killed and brought in here.

Q. Where did you see them?

147 A. Down here in the yard—the jail yard.

Q. Do you know the man's name?

A. No, sir.

Q. When was it you saw him?

A. About the 7th or 8th of April.

Q. Were they taken from you on the 5th also?

A. Yes, sir.

(Followed by Rider's "E.")

148 "E."

Q. Please look at these knives and these things you see lying there; do you know anything about them?

A. I had knives and jewelry like them.

Q. What I want to get at is, if at that same time anything of that kind was taken?

A. Yes, sir.

Q. You had knives and jewelry like this?

A. Yes, sir.

Q. Taken from you on the 5th of April?

A. Yes, sir.

Q. Please examine these boots lying there before you, and shoes and pants; there is another pair of pants.

Mr. MARMON. If the court please, it is understood that this goes in over our objection.

The COURT. Yes, sir.

Col. CLAYTON (to witness). Examine these.

A. The pants are the same that were taken from my store, and the shoes and the boots, and I recognize this shirt; I don't recognize these things [indicating]. I think probably some of these drawers were taken from my place; they taken the same kind of drawers.

Q. How about this handkerchief?

A. I don't recognize that.

Q. The pants you recognize as being taken?

A. Yes, sir.

Q. Those two striped shirts you recognize?

A. Yes, sir?

Q. There were drawers taken?

A. Yes, sir.

Q. Here are two pair of drawers that seem to be new. Please state if the drawers that were taken were of the same or of different character than these?

A. They were of the same character.

149 Q. They are of two kinds here?

A. Yes, sir.

Q. You state that these things you have mentioned were taken from you upon the evening of the 5th of April?

A. Yes, sir?

Q. Who took them?

A. Mr. Boyd there, and Stanley, and that gentleman who was killed that had on these clothes.

Q. Those were the three men?

A. Yes, sir.

Q. You saw the man who was killed?

A. Yes, sir.

Q. How did they take these things from you? I will get you to go on as I started before, and tell all about it. Were you keeping a store there?

A. Yes, sir.

Q. You were a merchant; had a store?

A. Yes, sir; I had been to town and came home about three o'clock, I think. This man Davis, or the one who was killed, was sitting on the porch on a box. I paid no attention to him, but went on to my business. A little before sundown Boyd and Stanley came in; they called for something to eat.

Q. They were not disguised in anyway?

A. No, sir; they came in and called for something to eat. My son give them some oysters and peaches; I don't know what all they ate——

Q. Which one of your sons?

A. William.

Q. That wasn't the one who went out hunting?

A. No, sir; he cut the oysters and peaches they ate, and Boyd steps up to pay me for them; he steps up there to the counter——

Q. What time was this?

A. This was just a little before dark. He steps up to pay me for them; he give me a five-dollar bill; I think it was 65 cents I charged him for what they ate; I give him the change; I was standing on this side
150 of the counter and Boyd was standing facing me, and Stanley was standing back there about four feet probably, and Davis was sitting on a box, I think. I gave Boyd his change and he rolled it up and put it in his pocketbook; he was very careful, I noticed, in shutting up his pocketbook. He stepped back, and Stanley drew his pistol—or had drew it, probably; if he had I didn't notice him—and he said, "Give us the rest of that." I said, "What does this mean?" And I heard something click, and Davis had got up in the door and had his gun pointed towards me, and he said, "Oh, you know what this means." He said, "Just hand it over; we don't want to hurt you." I said, "Boys, are you going to go through me?" He said, "Certainly, that is our business."

Q. What was Boyd doing in the mean time?

A. Standing out there in front smiling. I gave them the nickles and dimes, I think probably three or four——

Q. Did you notice whether Boyd was armed or not?

A. I didn't notice at that time. I got the nickles and dimes, threw them out on the counter, and Stanley reached over and taken out a bill or two and some silver that was in the inner drawer. There was another old gentleman in there——

Q. Who was that old man?

A. Old man Anderson. Boyd marched him around behind the counter.

Q. Was Boyd armed?

A. Yes, sir.

Q. He pulled his pistol out?

A. By that time he got his pistol out. And they sent Stanley behind the counter to search us. Stanley came and searched down me, feeling for weapons, I suppose. I didn't have any, and he taken a twenty-dol-
151 lar gold piece out of old man Anderson's pocket, and then they went to ransacking for other things, took these goods and packed them up.

Q. How did they pack them?

A. I think they packed them in that red shirt. They had a shirt with them; I am not certain it is that shirt. They packed some in a shirt, and some of them in some pants.

Q. Well, they packed these goods?

A. Yes, sir.

Q. How about the gun?

A. In the mean time they asked me if I had a pistol. I told them I didn't, and they said they knew I did. I told them I didn't have any. They said they knew damned well I wouldn't be keeping store without a pistol, and I think it was Davis told Stanley to go around and look; to go down to the office; I kept the post-office there; I had a pistol hanging up in the post-office, so he goes back and gets the pistol. Stanley got the pistol, brought it out, and gave it to Davis.

Q. Have you ever seen that pistol since?

A. Yes, sir.

Q. Where?

A. Pape turned it over to me.

Q. That is the one that Stanley stole from you?

A. Yes, sir. And then my boy came in with a gun on his shoulder, Jesse, and one or the 'tother of them said "Sonny, been hunting," and he said, "Yes." "Let me see your gun," and he just reached and took it off of his shoulder.

Q. Who did that?

A. I won't be certain whether it was Boyd or Davis. And he said to the boy, "You march around behind the counter." The boy didn't know hardly what it meant, and he said to him, "You know what this means; you get behind the counter," and he went.

152 Q. Was he much alarmed?

A. No, sir; I don't think he was much alarmed. And he also gave him a shot pouch.

Q. Do you know what your boy had been hunting?

A. Yes, sir; he had been out bird hunting.

Q. Did he have any game?

A. I don't think he did—probably he had killed a bird or two, I wouldn't say for certain.

Q. They got the gun?

A. Yes, sir.

Q. Please state if they took the gun off with them?

A. Yes, sir.

Q. That is the same gun you found down here?

A. Yes, sir.

Q. This coat and vest you identify as being yours?

A. Yes, sir.

Q. Is there anything peculiar about either of them that you know?

A. No, nothing particular. I had a piece on the back spliced there in Van Buren.

Q. You had that piece inserted?

A. Yes, sir.

Q. Were these clothing on you?

A. Yes, sir.

Q. Tell us about that.

A. When they had got about through Stanley came up and wanted my watch. I had a watch with a leather guard on it. It was forked from here [indicating] up—round platted leather guard—and he came up and wanted me to show him how to take it off, I don't know what remark to him, I didn't do it, and Davis said "Damn it, break it," and he broke it off and took it out. This is the watch here.

Q. Is this the same guard?

A. No, I haven't seen the guard since.

Q. You say this is the same watch [handing witness a watch]?

A. Yes, sir.

153 Q. Stanley took the watch?

A. Yes, sir.

Q. Go ahead.

A. Stanley taken the watch, and then one of them, I think it was Davis, said "You are getting too damned many in there." There was 7 or 8 in the mean time, people who come in there to trade, and they had marched

them behind the counter, and Davis said, "You are getting too damned many in there, hurry up boys, let's go." They said, "All right," they was about ready.

Q. It was Davis said that?

A. Yes, sir; he was doorkeeper. He said, "Let's be going." They said they was about ready, and when they got ready in a minute or so afterwards Davis said, "Well, give me that coat and vest." I told him "Jesus Christ, leave me my coat and vest" and I think he said—yes, he said, "By God, I want it, too; you are able to get more, I have to work for my living; pull it off." So I pulled it off. I asked him what he wanted with it. He said, "By God, I want it to wear."

Q. Is this the vest [exhibiting a vest]?

A. Yes, sir.

Q. You had this slice put in it yourself?

A. Yes, sir; a person working in the Boston store in Van Buren put that in. It wasn't large enough and a piece was inserted in the back.

Q. He said he had to work for his living?

A. Yes, sir.

Q. That was Davis, was it?

A. Yes, sir.

Q. And these clothing, I believe you say, were taken from Davis's body—you saw them on Davis's body?

A. Yes, sir; I helped take them off his body.

Q. You looked at him, did you; identified him?

A. Yes, sir.

Q. Did you identify these men?

A. Yes, sir.

Q. These are the men?

154 A. Yes, sir. I seen Boyd the day he was brought in and had his examination before the commissioner. We had a talk; he didn't deny being the man. He had on a pair of my pants then, when I came to see him in jail, I think other clothing, too; but anyhow he had on a pair of my pants. He told me I could have the pants if I wanted them. I told him I didn't want them.

Q. I wish you would look at Stanley.

A. I recognize him. He is the only one in the crowd I was afraid of. He was very nervous; he had his pistol on me, and I was afraid accidentally he would shoot me. The other two were very cool, Boyd and Davis. I watched Stanley closer than any of the rest, for I was afraid he would accidentally pull off the pistol.

Q. Was the pistol cocked?

A. Part of the time.

Q. How about the others?

A. They cocked their pistols. Generally two of them would be holding their pistols on us while the other was taking and packing up, getting ready; taking what he wanted.

Q. How many men did these fellows get into your store, corralled there?

A. I think 8 men, one women, a little boy, and my little boy.

Q. 8 men you included?

A. Yes, sir.

Q. 8 men, two boys, and a woman?
A. Yes, sir.
Q. That would be 11 altogether?
A. Yes, sir; I think that was all.
Q. These people who came in, you knew them; they were your neighbors?
A. Yes, sir; customers of mine.
Q. They didn't come to see the show; they come to the store?
155 A. Yes, sir; they come to the store; they didn't come to see the show, I don't think.
Q. The knives and this jewelry you can not identify, save you had that kind of jewelry and knives like these?
A. Yes, sir; I have got that kind of knives; that ain't all the knives they took from me. They took some 16 or 18 knives. They took six, to the best of my knowledge, spring-back dirks, something like this [exhibiting a knife], any more than they had a notch cut out there [pointing], and you shut it this way [indicating], and these others were this way [indicating]. I had a full box of them; I don't think I had sold any of them.
Q. These struck their fancy?
A. I think so; well, they were in a pretty good hurry; I don't think they stopped——
Q. How many of them did they take?
A. I think they taken six.
Q. None of these were returned?
A. No, sir.
Q. You only got six?
A. Yes, sir.
Q. The others that were taken you didn't get; you haven't got any of these yet?
A. No, sir; I have never got anything only my gun, watch, and pistol.
Q. The pistol was taken by Eugene Stanley?
A. Yes, sir; he took and turned it over to Davis, though; he handed it to him, and Davis looked at it and said, "It is a damn fine pistol," and stuck it down in his belt.
Q. This occur'ed on the 5th day of April, between sundown and dark?
A. Well, it was getting dark before they left; they had lit a lamp.
Q. Davis was the first one that came to your store?
156 A. Yes, sir; I threw some money under the counter while they were monkeying around. They looked for it, but couldn't find it. I had been to town and had a bunch of bills in my pocket. I worked them up this way, and I thought I catched their eyes off of me, but Davis discovered it and said I throwed some money under the table, and I said, "I didn't do any such thing," and he said, "You made a wrong move there," and he told Stanley to light the lamp and look for it, and he lit the lamp and sit the lamp in about 4 inches of the bills, but he didn't see them.
Q. How much was in it?
A. I don't recollect how much; I didn't pick it up myself. I went on myself that night, and it was picked up next morning. I was watching them to catch their eyes off of me, and when I threw it Davis was looking.
Q. Please state the time that Stanley came to your place.
A. Stanley and Boyd came just a little before sundown.

Q. Did you not say that Davis came about the middle of the afternoon?
A. He was there when I came from town.
Q. You came from town about what time?
A. I think about the middle of the afternoon; I don't remember.
Q. You first saw him about the middle of the afternoon?

Cross-examination:

Mr. MARMON. Did you ever see Mr. Boyd before?
A. I think he had been to my store just a few days previous to that and bought something; I am not positive about that.
Q. You are not acquainted with him?
157 A. No, sir; I couldn't be positive about that, that he was there; that he had been there before, I won't be positive about that.
Q. Then if he wasn't there, the night you were robbed is the first time you ever saw him?
A. Yes, sir.
Q. How was he dressed—Boyd?
A. I declare I don't know.
Q. What kind of whiskers did he have?
A. I don't think he had any.
Q. Did he have any mustache?
A. I think probably he had mustache.
Q. If you are able to identify him now, you know whether he had a mustache or not, don't you?
A. I don't know positive whether he had a mustache or not.
Q. Do you know this was the man that was there?
A. Yes, sir; I know that was the man, because I seen him in about 2 or 3 days afterwards and talked with him, and he didn't deny it; he owned to being the man.
Q. He didn't admit it, did he?
A. He just says this: "If you will not abuse me I will tell you all about it;" and I said, of course I won't try to abuse you or any man behind the bars.
Q. Did he admit it?
A. He admitted these being my clothes.
Q. Did he not say this to you: If you want these pants you can have them?
A. Yes, sir.
Q. Isn't that what he said?
A. Yes, sir; he said that.
Q. He didn't say he was there and got them?
A. I won't be positive about that—that he said he was there.
Q. You can not tell whether he had a mustache or whiskers?
A. I know he had no whiskers.
Q. You can not say whether he had a mustache?
158 A. No, sir; I couldn't say positive.
Q. You were watching Stanley more than anybody else, were you not?
A. Yes, sir.
Q. He was the man that attracted your attention more closely than anybody else?
A. Yes, sir.

Q. Was there anybody else there except the three?

A. That is all I saw.

Col. CLAYTON. Did I understand you to say it was Boyd or Davis that was there when you came in?

The WITNESS. It was Davis.

Mr. MARMON (To witness). How far is Dora above Van Buren?

A. Five and a half miles, by rail.

Q. That was on Saturday night, the 5th day of April?

A. Yes, sir.

Q. About sundown?

A. Yes, sir.

Q. Now, about this gun; how did you prove that gun here? I understood you to say you never saw it before it was turned over to your son?

A. Not after it was taken; no, sir.

Q. How did you get possession of it?

A. I offered a reward—I just made this remark, that I would give $50.00 for either one of these men, or for all of them. They got into that fight over there, and they were captured, and I seen Martin Byrd over here and told him I would give him $50.00, but he must bring my gun to me first, and he said all right, but I think he was afraid I wouldn't pay the money for he brought the gun to the office and left it, and came over and got the $50.00, and said I could get the gun by coming after it, and I
159 sent my son with an order and he came here and got it; I sent the order to Pape.

Q. Do you know how that gun was loaded?

A. No, sir; I know how the shells were loaded that the boy was hunting with.

Q. How do you know that?

A. Because I loaded it.

Q. You don't know how it was loaded afterwards?

A. No; unless it was the same shells, I don't know anything about it.

Q. What number gun did you say it was?

A. No. 12.

Q. What size store is that you have up there?

A. It is a small store.

Q. I mean the length of the house?

A. 42 feet.

Q. After sundown it begins to get pretty dark in there unless you have a light, does it not?

A. Yes, sir.

Q. These parties just walked in just like other strangers did, and asked for something to eat?

A. Yes, sir.

Q. You got them something?

A. Yes, sir.

Q. Mr. Boyd paid you for what he got?

A. Yes, sir; he paid for all.

Q. He gave you a five-dollar bill, and you took it out of it?

A. Yes, sir.

Q. Mr. Boyd didn't take anything, did he; did he put his hands on a thing?

A. Yes, sir.

Q. What?

A. He took some clothing. They wasn't in no big hurry. They generally measured the pants, and tried the boots to see whether they would fit or not, and the shoes. One or two of them tried them on. I don't know positive whether Boyd tried on any boots or not.

Q. Did Boyd try any pants?

160 A. Yes, sir; stretched them out this way [indicating by holding both arms out straight from the body].

Q. Did he go behind the counter?

A. I am not positive that he did; if he did, I think it was after tobacco.

Q. Is that all he went around the counter for?

A. He didn't have to go around behind the counter to get the clothing. Where the two counters come together is a place where I kept the ready-made clothing, and he could walk in between the two counters and get hold of them.

Q. You said something about one of them taking a gun off of your son's shoulder; who was that?

A. I said I wouldn't be positive which one it was, whether it was Davis or Boyd; I am pretty certain it was Boyd taken the gun.

Q. You said Davis was doorkeeper; you ought to know whether it was taken right at the door, or whether it was taken by Boyd right in the house?

A. It was taken right at the door, as soon as the boy stepped in.

Q. Davis was doorkeeper?

A. Yes, sir; but he didn't stand in the door all the time; he was there pretty regular though; he was setting right in the door, probably in the house two feet.

Q. Where did Boyd stay most of the time?

A. Boyd staid most of the time—we was behind the counter—and Boyd staid most of the time out there in front of us; stood out there.

Q. Then it is hardly probable he is the man who took the gun, is it?

A. He didn't stand in one place all the time; he was sometime in the door. He went out and brought in one man.

Col. CLAYTON. A prisoner?

161 A. Yes, sir. There was a drunk fellow rode up, and they invited him in, and he didn't have any notion of coming in, and I think Boyd jerked him off the horse and fetched him in, tolerable rough about it, too.

Q. Who was that?

A. George Hasket.

Q. Where is he?

A. He is there close to Dora.

Q. Did you say he was drunk?

A. I think he was drunk. He will be apt to own to being drunk.

Q. Was there anybody else brought in there that way?

A. When anybody would come up on the porch Davis would tell them to walk in.

Q. Invite them in?

A. Yes, sir.

Q. You say they had 8 men, two boys, and one woman?
A. Yes, sir.
Q. Who were the men?
A. Myself and Anderson.
Q. What is his name?
A. James Anderson.
Q. Who else?
A. William La Pool.
Q. Who else?
A. George Haskett, Ben Johnson, Frank Williams, a colored man, a fellow by the name of Asher, Bill Asher I think was his name. I think that is all.
Q. That only gives 7?
A. And myself.
Q. Well that is only 7, the way I count?
Mr. FANNIN (ass't dist. att'y). Who was the old man that was in there?
A. Anderson.
Col. CLAYTON. Seven instead of eight, then?
The WITNESS. Asher's wife was the woman.
Mr. MARMON. Where are these parties?
A. They are all close around over there, except this colored man, I think he has left the country.
Q. They all say these parties did they?
162 A. Yes, sir; I think probably Asher isn't there now; I think probably he is below Van Buren.
Q. Anyway, they all saw these parties that were there?
A. Yes, sir.
Q. Are any of them here?
A. No; none of them in town that I know of.
Q. What is your son's name; you had two sons there, I believe?
A. Yes, sir; the one that had cut the oysters and eatables for these men had gone home.
Q. Your son who had been hunting was there, and then the son of another fellow.
A. Yes, sir; the old man Anderson's stepson, 7 or 8 years old, was there. He came in to tell his stepfather to come to supper, and these gentlemen told him not to be in a hurry; just wait awhile; they would all go directly.
Q. Who did you say it was that took the $20.00 in gold from old man Anderson's pocket?
A. Stanley; he took all the money.
Q. How did he get it?
A. Run his hand in his pocket and got it.
Q. Stanley got the pistol, you say?
A. Yes, sir.
Col. GRACE (att'y for def't Stanley). You think these are the men you saw?
A. Yes, sir.
Q. You never seen any of them before, unless it was Boyd?
A. If I ever seen any of them, I seen him and Stanley together before that time; I am not positive whether I did or not.

Q. How did you know it unless you know whether you did or not? You don't know you ever saw them before?

A. No, sir; I don't know that I did.

163 Q. That is the way to state it then, unless you do know. You don't know that is the clothing except that you missed some?

A. I know that is the shirt and pants.

Q. How do you know?

A. Because I seen them take them.

Q. How do you know these are the ones that you saw them take?

A. I saw them taken, and they were returned to the office here in a few days afterwards.

Q. That is the way you know it?

A. Yes, sir.

Q. Otherwise you can not say, except from the fact that they were turned in here at the office. As far as any marks or looks are concerned, you don't remember?

A. Any more than the color and quality of the goods.

Q. You have pretty much of all colors in your store?

A. Not at that time I didn't.

Q. All white drawers are white?

A. Yes, sir; I suppose so.

Q. Where do you lay in your goods at?

A. I bought these goods of Townsley & Myrick here in Ft. Smith.

Q. Anybody else could buy here as well as you, I suppose?

A. Yes, sir.

Col. CLAYTON. Possibly they were stolen from somebody else, I don't know.

Mr. MARMON. They might be bought from somebody, too.

Col. GRACE. You don't know really how many you lost, do you?

A. No, sir.

Q. You saw them rumaging around, but how many they got, you don't know?

A. No, sir; I don't know exactly.

164 Q. You didn't take an invoice shortly before that or one immediately after to see what was missing?

A. No, sir; I am satisfied they got a good many more than what is turned over here.

Q. You think you missed more, but you don't know it. You say Davis had on your clothing; did they fit Davis pretty well? Was Davis a little fellow or a big fellow?

A. He was tolerable tall, but was slim.

Q. Did he put them on in the store?

A. I don't think he did.

Q. He had a coat on, did he not?

A. I think so.

Col. CLAYTON (to witness). You did not bring the pistol here with you, did you?

A. No, sir.

Col. GRACE (to witness). What kind of a pistol was that?

A. It was a Smith & Wesson.

Q. What kind of a handle did it have?

A. A pearl handle.
Q. That is the one you lost, is it?
A. Yes, sir.
Col. CLAYTON (to witness). What calibre was your pistol.
A. 44, I think.
Col. GRACE (to witness). How long was it until you saw Stanley after that?
A. I never seen him until yesterday—not that I know of.
Q. That is the only time you ever saw him, as far as you know?
A. Yes, sir.
Q. You might be mistaken then in the man, might you not?
A. I don't know; I don't think there is any chance to be mistaken.
Q. Was you never mistaken in people?
A. I could be.
Q. You might make a mistake; might think you saw a man when he wasn't there, might you not? Did you ever think you saw a
165 certain man going down the street, when it turned out afterwards it wasn't him at all? (No response.) Were you never mistaken?
A. Oh, yes, I have been.
Q. You are not always right, then?
A. Oh, no, I think not?
Q. At that time did you get scared? You felt more excited after they left than you did while they were there?
A. No, sir; I wasn't very badly scared when they were there, or when they left there. As I said before, I was afraid Stanley would shoot me accidentally. I didn't think he meant to shoot me, unless we wouldn't let them have what they wanted.
Q. There was nothing to hinder him shooting you?
A. No, sir.
Q. All he had to do was to pull the trigger?

Redirect examination:

Col. CLAYTON. If you are mistaken as to these (indicating) you are not mistaken in the watch, clothing, and boots and the gun?
A. I think not; no, sir.

Re-recross examination:

Col. BYERS. You say you threw a handful of bills down under the counter and never went after them; didn't go back after them?
A. I said I went off that night.
Q. Were you in the habit of pulling out a roll of bills and throwing them down and not going after them?
A. No, sir; but we locked the store and I went off that night.

166 Reredirect examination:

Col. CLAYTON. What is the value of your watch?
A. $35.00.
Q. What is the value of the boots and shoes that were taken from you?
A. Well, I couldn't tell; I don't know how many they taken.
Q. These that are here?
A. The cost of them is two and a quarter.
Q. The shoes?

A. I think about a dollar and a quarter.

Q. What is the value of the clothing? Just fix any value on them, and the knives. Say this coat and vest here.

A. The coat and vest is worth about 12 dollars, or were at the time they were taken. The pants about a dollar a pair, and the drawers about 40 or 45 cents; shirts fifty cents; knives, well, we would say they were worth about fifty cents apiece. That knife there is worth seventy-five cents.

Q. Did you sell them for seventy-five cents or pay seventy-five cents for them?

A. Sold them for seventy-five cents.

Q. These are worth about how much?

A. I think I sold them for about 60 cents.

Q. What are these cuff buttons worth?

A. About 25 cents a pair.

Q. What is the gun worth?

A. I paid $20.00 for the gun?

Q. What was the pistol worth?

A. The pistol cost me $12.00.

Q. You are satisfied, you say, there was many other things?

A. Yes, sir.

Q. Other things of value that were taken besides these?

167 A. Yes, sir.

Rererecross-examination:

Col. BYERS. What did you say that watch was worth?

A. $35.00.

Q. It is not a solid gold watch; simply a filled case.

A. Yes, sir; I think so.

WILLIAM B. PAPE recalled.

Col. CLAYTON. You stated yesterday you gave Rigsby a watch and pistol.

A. Yes, sir.

Q. Look at that watch; do you recognize it?

A. I don't know whether this is the watch; it was an open-faced watch and looked a good deal like that; I just taken the watch in my hands and handed it to him.

Q. Where did you get it from?

A. From Mr. Bob Toppins.

Q. He is the deputy that brought him in?

A. Yes, sir.

Q. You gave the pistol to him, too?

A. Yes, sir.

Q. What kind of a pistol was that?

A. A. 44 Smith & Wesson, pearl handle, tolerable new pistol.

Q. State who you got the pistol from.

A. I got the pistol from William Mickle.

168 Q. Before or after Stanley was arrested?

A. It was after Mickle arrested Stanley.

JACOB JACKSON.

Col. CLAYTON. State your name?

A. J. B. Jackson.

Q. Jacob B.?

A. Yes, sir.

Q. Where do you live?

A. In Scullyville County.

Q. At what place?

A. 8 miles from Poteau.

Q. In the Choctaw Nation?

A. Yes, sir.

Q. Please state if you hold any office.

A. I am national secretary for the Choctaw Nation.

Q. As the national sec. please state if you are the custodian of the books and papers that show what colored men have registered under your law.

A. Yes, sir; I have all those books.

Q. And what colored men have received their money?

A. Yes, sir; there is a record shows all those who become citizens of the Nation, and there is a record shows the parties who received their money.

The COURT. That is the roll for Scullyville County?

A. Yes, sir.

Q. See if John Dansby is on that roll.

A. Yes, sir.

Col. GRACE. Just wait a moment, please. (To witness.) You say these are the rolls of Scullyville County?

A. Yes, sir.

Q. Are you the custodian of all the rolls of all the different counties?

A. Yes, sir.

169 The COURT. You are secretary of the Nation, are you not?

A. Yes, sir.

Q. The law provides they are to be deposited in the secretary's office?

A. Yes, sir.

Col. GRACE (to witness). The rolls are made out for each county?

A. Yes, sir; it shows in this other record here those who have received their money. Under the treaties, you see, they are entitled to $100.00, those who wish to become citizens of the United States, and John Dansby was in that roll.

The COURT. He took the $100.00?

A. Yes, sir.

Q. And this other is the roll of what?

A. Of those who have become citizens.

Q. In these books there?

A. Yes, sir.

Q. Is that by counties, too?

A. Yes, sir; this shows only in Scullyville County.

Col. CLAYTON. This book, or record, shows that John Dansby received his money as a citizen of the United States?

A. Yes, sir.

Q. Did you know him?

A. No, sir; I didn't know him.

Col. GRACE. (to witness). Do you know whose handwriting this is in?

A. I don't know; that come from the Department, but this here——

Q. I am just asking about this now. Is this a copy of the original?

A. I think it is a copy from that record from the Department at Washington. You know the council passed a resolution last session authorizing the principal chief to get a copy from the Department, and they were sent to Governor Smallwood last winter sometime, and filed in the office.

170 Q. There is nothing to show these were ever filled in that office, or that they are a copy of the rolls at Washington.

The COURT (to witness). Where did you get these rolls?

A. From Washington.

Q. Where did you get them now? Where did you bring them from?

A. From my office as national secretary.

Q. Are they deposited in the office of the national secretary?

A. Yes, sir.

Col. CLAYTON (to witness). Are they a part of the records of your office, deposited there?

A. Yes, sir.

Q. John Dansby (that is his name) received $100.00.

Col. GRACE (to witness). Why isn't the date of that receipt there? I will ask you if the date of that receipt is there?

Col. CLAYTON. None of them are dated.

Col. GRACE. These are all dated, all of them but his.

The COURT (to witness.) Have you got the roll of Scullyville County there of those who have become citizens?

A. Yes, sir.

Col. CLAYTON (to Col. Grace). Here is the date. John Dansby is marked wife, son, son, son, daughter, son—his family, and here is the date.

Col. GRACE. It seems like if these are copies from the rolls at Washington, there ought to be something to show they are copies of the rolls; there is nothing to show these are any copies at all.

Col. CLAYTON (to witness). What book is this [indicating].

A. This here is names of persons who elect to leave the nation; here is John Dansby's name.

171 Q. Is that the original book?

A. Yes, sir.

Q. Whose handwriting is that in?

A. I think that is Captain Welch's; I think he was clerk for the commissioners.

Q. Is that book a record of your office?

A. Yes, sir.

Col. CLAYTON (to the court). Names, if your honor please, or persons who elect to leave the nation. Under that head, "44, John Dansby" and then the name of the children. That is the way it runs. There is John Dansby's name there [pointing.]

The COURT. You have proven that John Dansby was a colored man by blood.

Col. CLAYTON. Yes, sir.

The COURT. That makes a prima facie case of jurisdiction. (To witness.) Have you got the roll of citizens of Scullyville County?

A. Yes, sir; that is the book there.

Q. You say that John Dansby's name does not appear on that book as a citizen?

A. No, sir.

Col. CLAYTON (to witness). I want you to examine that list of Scullyville County and see whether his name appears as a citizen.

A. Here is the names of the Dansby family who become citizens—only four of them; his name is not there.

Q. John Dansby's name does not appear.

A. No, sir.

The COURT (to witness). What book is that? Is that the record that is deposited in your office of colored men who become citizens?

A. Yes, sir.

Col. GRACE. Have you looked all through it in the Scullyville County part to see if his name was on it as a citizen?

172 A. No, sir; I have not looked all through it, but there are only these names on the record, is all.

The COURT. These books are brought from your office as national secretary?

A. Yes, sir.

Q. You have the custody of them?

A. Yes, sir; the law authorizes the national secretary to keep all these public documents that belong to the nation.

Col. CLAYTON. Here is John Dansby's name, dated November 19th, 1887, with the witnesses here?

The COURT. You offer that?

A. Yes, sir.

The COURT. Let them go in.

Col. GRACE. We object to that on the ground there is nothing to show they are a copy of the rolls, or nothing to show they belong to the secretary's office.

The COURT (to witness). Is that the roll that is deposited in your office of the persons who received money?

A. Yes, sir.

Q. That is brought by you from your office?

A. Yes, sir.

Q. You are the custodian of all these books?

A. Yes, sir.

Col. GRACE. These rolls are objected to, all of them, on the ground they do not show from what custody they come, on their face, and they do not show they are a copy of the rolls deposited at Washington.

Col. CLAYTON (to witness). Did you find this [referring to rolls which have been introduced in evidence] in this envelope in your office when you took charge?

A. Yes, sir.

Q. Who was the principal chief at that time?

173 A. B. F. Smallwood.

Col. CLAYTON (to the court). I introduce the envelope containing them. On the back of it is this: "Gov. B. F. Smallwood, principal

chief of the Choctaw Nation, Lehigh, Indian Territory." In the corner, "Department of the Interior, Official business." Then comes the usual penalty.

Col. GRACE. We object to the envelope also.

Col. CLAYTON (to witness). I find these letters here; do they go with it?

A. Yes, sir.

Col. CLAYTON. I do not introduce these, but they are there.

Col. GRACE. We don't want to examine him until we look through the books.

Col. CLAYTON. I introduce these books, and I introduce the roll, and I introduce a book marked "1st district, C. N." Another book marked on the back "elect to retire, 1st dist. registration book." Both books are marked registration books on the back.

Col. BYERS. The objection goes to the manner of authenticity of the books.

174 T. D. AINSWORTH.

Col. CLAYTON. Did you know John Dansby, the old man who was killed up there at Byrd's Ferry?

A. Yes, sir.

Q. How long had you known him?

A. About 23 or 24 years, I think.

Q. Do you know whether he, at the time he was killed, was a citizen of the Choctaw Nation?

A. He wasn't.

Q. How do you know that he was not?

A. I was chairman of the board of registration there of freemen, and the proposition was laid before them as to whether they would take money or citizenship, and Mr. Dansby took money, and agreed to leave the country.

Q. How did you know that? Did he come before you?

A. Yes, sir.

Q. Did you see him sign any papers?

A. He needn't sign any papers; it was not necessary for him to sign—I put the question to him myself, and ascertained his wishes in the premises.

Q. Do you know who put his name on the registration book?

A. Judge Welch.

Q. In your presence?

A. Yes, sir; under my instruction.

Q. Take that and see if that is the book.

A. Yes, sir; that is the book.

Q. What position did Judge Welch have?

A. He was the clerk of the commissioners.

Q. Is that his handwriting?

A. Yes, sir.

Q. Do you see John Dansby's name on that?

A. Yes, sir.

Q. Is that the same John Dansby that was killed?

A. Yes, sir.

Q. Do you know of your own knowledge whether he was paid
175 or not?

A. No, sir; I do not.

The COURT (to Col. Clayton). Does that show he elected to take the money there?

Col. CLAYTON. It shows the names of persons who elected to leave the Nation.

Col. GRACE. Of course, the same objection is applied to him as to the other. We will not examine him until we have time to look over the books. (To witness.) What office was you in?

A. I was one of the board of registration, appointed to register freedmen there in our country.

Q. Where did Dansby live?

A. He lived there in the county, near me.

Q. Scullyville?

A. Yes, sir; three or four miles from Scullyville.

The COURT (to witness). Did he live at that time at the same place he did when he was killed?

A. No, sir; I think not.

Q. The same county, though?

A. Yes, sir.

Col. GRACE (to witness). You don't know about his receiving the money?

A. No, sir; not to my own knowledge.

Q. How did the commissioners do; did they write all the names in the book, or did the parties write them in?

A. There was a clerk appointed to write them in the book; you see a great many of these negroes couldn't write.

Q. Do you know whether Dansby could write or not?

A. I don't think he could—well, I am positive he wouldn't.

176 SIMON DANSBY.

Col. CLAYTON. What is your name?

A. Simon Dansby.

Q. Did you know John Dansby in his lifetime?

A. Yes, sir.

Q. What relation was he to you?

A. Stepfather.

Q. Did you live with him?

A. Yes, sir.

Q. Was he a citizen of the Choctaw Nation, or a non-citizen?

A. He was a non-citizen.

Q. How do you know?

A. Because he sold his right for $100.00.

Q. Were you present when he was paid the money?

A. Yes, sir.

Q. Who paid it to him?

A. Agent Owens.

Q. You were present when Agent Owens paid him $100.00?

A. Yes, sir.

Q. He sold his right for $100.00?

A. Yes, sir.

Q. He was one of the colored men up there who elected to take the $100.00?
A. Yes, sir.
Q. Now, then, he is dead?
A. Yes, sir.
Q. Do you know when he was killed?
A. He was shot on the 6th of April.
Q. That was on Sunday?
A. Yes, sir; and he died on the 10th.
Q. Where were you on the day he was shot?
A. I was at the church-house in the day.
Q. Do you know where your father was during that day?
A. He was down at the creek Sunday, all day.
Q. At whose place?
A. Martin Byrd's.
Q. Did you go down there that night?
A. Yes, sir; after the shooting was over with.
Q. How far did you live from there, you and your stepfather?
177 A. Bout a mile.
Q. How came you to go down there?
A. I heard the shooting and I went down there to see what was the matter.
Q. Anybody go with you?
A. Mr. Jeff. Campbell went with me.
Q. Did you know what the shooting was?
A. No, sir; I didn't know until I got there.
Q. When you got there what did you find?
A. When I got there Mr. Boyd told me that my stepfather was shot.
Q. When you got there where were they?
A. They were on the creek, right on the water, on the ferryboat, fixing to go up after Mr. Boyd.
Q. Where was your stepfather?
A. He was in the house.
Q. They had carried him up to the house?
A. Yes, sir.
Q. State what was done after you got there.
A. They carried the boat up to where Mr. Boyd was, and we took Mr. Boyd and put him on the ferryboat, and after we put him on he said, "This ain't the first man I have killed."
Q. That was after he got on the boat?
A. Yes, sir; after we put him on the boat, and we all listened at him. Martin told us to listen at him. He said, "This makes eleven men I have killed."
Q. What else did he say, if anything?
A. He said, "Where did I hit Dansby at?" Some of the boys said, "You hit him in the back." He said, "I aimed to break his back."
Q. Where was your stepfather shot?
A. Shot in between the shoulders, right in the middle of the back.
Q. Well, what did you do with him?
A. We taken and put him on the boat, and taken him on up
178 to the house, and laid him on the porch.

Q. When you went to the house what did you find there?
A. We didn't find any one but my stepfather.
Q. Your stepfather was at the house?
A. Yes, sir.
Q. Who all did you find there, you and Campbell, when you went down to the boat; who was there?
A. There was Mr. Martin Byrd, and Joe Byrd, and Richard Butler; that was all.
Q. Where was Boyd?
A. Boyd wasn't there; he was up the creek there a piece.
Q. Richard Butler was there, was he?
A. Yes, sir.
Q. Which side of the creek did you live on? Did you live on the same side of the creek Byrd's house is on?
A. Yes, sir.
Q. You got there after the shooting was all over; you heard the shooting and went down?
A. Yes, sir; it was all over when I got there.
Q. Did you find anybody dead when you got there?
A. Yes, sir; there was a dead man laying there.
Q. Did you know who that was?
A. No, sir; I didn't know him.

Cross-examination:

Mr. MARMON. Who was it you said you found down there at the river when you went down there?
A. Joe Byrd, Martin Byrd, and Richard Butler.
Q. All three of them there?
A. Yes, sir.
Q. Are you certain about that?
A. Yes, sir.
Q. Where was Martin?
A. He was on the boat going after Mr. Boyd.
179 Q. Where was Joe?
A. All on the boat.
Q. Where did you get on the boat?
A. I got on the boat about 20 steps from the house, kind of off to the right of the house.
Q. Was it below or above the ferry?
A. Above the ferry a little piece.
Q. That is, going towards Ft. Smith, or down that way?
A. Going up the river.
Q. About 20 steps from the house?
A. Yes, sir.
Q. You are certain Martin was on the boat?
A. Yes, sir.
Q. You know that?
A. Yes, sir.
Q. Didn't you all go down there, you and Mr. Campbell, and Butler, and Joe Byrd, and find Martin on one side, go there and take him on opposite to where Boyd was, and go and get Boyd?
A. No, sir.

Q. Didn't do that?
A. No, sir.
Q. That is not a fact?
A. No, sir.
Q. Campbell went on the same boat with you, did he?
A. Yes, sir.
Q. When you got down there, where did you find Mr. Boyd?
A. Found Mr. Boyd lying on the edge of the water, right on a bluff, half of him was laying in the water; the water was touching him up around here.
Q. What was it he said when you took him on the boat?
A. He said, "Boys, this ain't the first man I have killed," and Mr. Byrd said, "Listen at him," and we all listened, and he said, "This makes 11 men I have killed."
Q. Are you certain about that?
A. Yes, sir.
Q. You remember these words?
A. Yes, sir.
180 Q. Which Mr. Byrd was it that said to listen to him?
A. Martin Byrd.
Q. What was Joe during that time doing?
A. He was standing there; wasn't doing anything.
Q. Martin said, "Listen at him?"
A. Yes, sir.
Q. He says, "This ain't the first man I have killed?"
A. Yes, sir.
Q. Martin then said, "Listen at him?"
A. Yes, sir.
Q. He said, "I have killed eleven men?"
A. Yes, sir.
Q. What else did he say?
A. He said, "Where did I shoot Mr. Dansby at?" and some of the boys, I don't know which one of them said it, "You shot him in the back." "Well," he said, "I aimed to break his back."
Q. What else did he say?
A. That is all he said.
Q. Stopped right short off there?
A. Yes, sir.
Q. Never said another word?
A. He was grunting, that was all.
Q. He just made that statement there to you boys who had him in charge, men he had just had a fight with, and that is all he said then; never said another word?
A. If he said anything more I didn't hear him.
Q. You were there all the time?
A. I was there; I only hear him grunt.
Q. You could hear him grunt? He said, "Where did I hit Dansby at?" and some of the boys said, "You hit him in the back." and he said, "Well, I aimed to break his back," and then he grunted?
A. Yes, sir.
Q. That was the last of the talk?

181 A. I never heard him say any more.

Q. You were on the boat with him?

A. Yes, sir. We was busy with the boat, pulling the boat down the stream.

Q. You took time to listen to that?

A. Yes, sir.

Q. If he had said anything else you would have heard it?

A. Yes, sir; I guess I would.

Q. You took him on up to the house then?

A. Yes, sir.

Q. And he didn't do anything except grunt from there up to the house? When did Martin tell you to swear this?

A. Martin didn't tell me to swear nothing.

Col. CLAYTON. I do not think that is a proper question to put to the witness.

The COURT. First ask him if Martin did tell him that.

Mr. MARMON (to witness). Have you talked with Martin about this a great deal?

A. No, sir. When they bring me to court to swear, I swear the best I know how.

Q. You never talked to Martin about this?

A. No, sir.

Q. Never did in your life?

A. No, sir.

Q. From the time he told you on the boat to listen?

A. No, sir.

Q. He never asked you whether you listened or not afterwards?

A. No, sir; but I told him I heard what the defendant said right there on the boat.

Q. What did you do that for?

A. I just said I heard him; that is all I said.

Q. What made you say that, Simon?

A. I just give him that answer. When he said, "Listen, boys,"

182 I said, "I hear him." That is what I said.

Q. What did the other boys say; did they say, "I hear him, too?"

A. I don't know, sir, what the other boys said.

Q. You were right there, all standing right together, was you not?

A. We was on the boat; but I wasn't paying any attention to what the other boys was saying.

Q. How is it you was paying so much attention to Boyd, and not what the other boys said; how is that?

A. I was listening at him.

Q. You were there to listen at Boyd. That is what you were there for. That was your special business 'own there, was it?

A. No, sir.

Q. Could you tell me what the others said when you remarked after Martin said, "Listen!" "I hear him?"

A. No, sir; I don't know what the others said at all.

Q. You directed your attention to Boyd?

A. Yes, sir.

Q. So as to be certain to remember exactly what he said?
A. Yes, sir.
Q. And these are the exact words he used?
A. Yes, sir.
Q. When you got down to the ferry what did you find there—when you took Boyd off you took him up to the house?
A. Yes, sir.
Q. Did you find a man down there dead?
A. Yes, sir.
Q. Where was he lying?
A. Lying there on the cache bank, on the river bank.
Q. That was before you carried Boyd up to the house that you saw him?
A. No, sir; we saw him after we carried Boyd to the house.
183 Q. Who helped you carry Boyd to the house?
A. Martin and Joe Byrd.
Q. When was it you saw this man on cache bank?
A. Saw him there that night after we had taken Boyd up to the house.
Q. How long afterwards?
A. I reckon it was soon after we carried Mr. Boyd up to the house.
Q. You all went down there?
A. Yes, sir.
Q. Where was he laying from that sycamore tree they hitched the boat too?
A. He was laying up the creek.
Q. How far up the creek?
A. Well, I reckon about 30 steps from that tree.
Q. Is that the place where he was shot?
A. Yes, sir.
Q. That was the place where he was shot?
A. Yes, sir.
Q. Who told you that was the place?
A. He was laying right—they left him laying there until he was moved.
Q. Was there a puddle of blood there?
A. Yes, sir.
Q. That wasn't in the road, was it?
A. No, sir; it wasn't in the road.
Q. Had Joe Byrd or Martin Byrd left you after you got with them there at the ferry when you come and went up after Boyd befor' you saw the dead man; that is, had they got out of your sight, out of your presence?
A. No, sir; they never got out of my presence after we had carried Boyd up to the house.
Q. You came back with them to the river?
A. Yes, sir.
Q. 20 or 30 steps up the creek above the sycamore tree is where you found this dead man?
A. Yes, sir.
Q. He was in a puddle of blood that came out of his head?
A. Yes, sir.
184 Q. Did you know that man's name?
A. No, sir; only what they told me.

Q. You hadn't gone down to the house and saw your stepfather before you went down after Boyd?

A. No, sir.

Q. They told you he was shot?

A. Yes, sir; but I didn't know it until we got back with Mr. Boyd.

Q. How long after you went up there and carried Boyd up was it that Martin left and went after the doctor?

A. I reckon it was about 20 or 30 minutes after we taken Mr. Boyd up there; then he went after the doctor.

Q. You all walked back down and looked at this dead man, and then came back, and he went after the doctor?

A. Yes, sir.

Q. How did you come to go down there that night?

A. I heard the shooting and went down there to see what was the matter; I thought I would go down there, I heard the shooting, but I didn't know what was the matter.

Q. Had it not been understood that night, or the day before that, that Dansby was to go down to Byrd's and carry his gun; he took his gun with him, did he not?

A. Yes, sir.

Q. Carry his gun; and they were going gut to look for somebody?

A. No, sir; I didn't hear him say that; he went down there to run the ferry.

Col. CLAYTON. That is the old man Dansby?

A. Yes, sir.

Mr. MARMON. Went down there to run the ferry?

A. Yes, sir.

Q. What was going to become of Martin?

A. He was going off; I don't know where he was going.

Q. What was going to become of Joe Byrd; he lives there with him?

185 *Q.* I don't know where he was going; he didn't know how to run the ferry; that's the reason he got the old man to run the ferry.

Q. Joe couldn't run the ferry?

A. No, sir.

Q. Did anybody come around to your house that night—the night the shooting was going on?

A. No, sir; not that I know of; I wasn't at home—after the shooting I wasn't there.

Q. I mean before the shooting?

A. No, sir; there wasn't no one came there around home at all.

Q. Who lived with you?

A. The old man used to live with me before he was dead; there ain't no one there now but my mother and my brothers.

Q. You say Martin wasn't around there that evening or that night?

A. No, sir; I didn't see him.

Q. Was Joe Byrd there?

A. No, sir.

Q. Was Butler there?

A. No, sir.

Q. The old man took his gun and went down to run the ferry for Martin?

A. Yes, sir.

Q. What kind of a gun was it?

A. Winchester.

Q. Was it loaded?

A. He had cartridges in it; I guess he had it loaded; he had it in the magazine.

Q. How many bullets did he have?

A. I don't know, sir.

Q. He had a good many?

A. I don't know, sir.

Q. You just heard the shooting and concluded you would go down there?

A. Yes, sir.

Q. After you told Martin, "I hear him," there on the boat, did you ever have any talk with him about what you heard Boyd said?

186 A. No, sir.

Q. You were down here before the commissioner, I believe?

A. No, sir.

Q. You never had any more talk with him; never said anything else there that night?

A. No, sir.

Col. GRACE (atty. for defendant Stanley). How far were you away from there when the shooting began?

A. Just about a mile.

Q. Had you been asleep; had you gone to bed?

A. No, sir; I hadn't went to bed yet, but I was fixing to go to bed when I heard the shooting.

Q. You were in the house, were you?

A. Yes, sir.

Q. And you went down?

A. Yes, sir; I heard the shooting, and directly after the shooting stopped I pulled out.

Redirect examination:

Col. CLAYTON. When you got down there you went to where they were at the boat?

A. Yes, sir.

Q. Where was the boat?

A. It was about 20 steps right up the creek, a little piece from the house; they had got it up about there.

Q. They had got it up?

A. Yes, sir; from the ferry up to there.

Q. They had got the boat up from the ferry up opposite to where Boyd was?

A. No, sir; Boyd wasn't right where I got on the boat, but Boyd was up the creek 200 or 300 yards.

187 Q. You must have got on down near the ferry?

A. Yes, sir; I got on pretty near even with the house.

Q. That is way above the ferry?

A. The ferry is just—it aint over 40 yards from the house.
Q. Are you not mistaken about that?
A. It is between 40 and 100 yards.
Q. You are all mixed on distances.
A. I never stepped it; I never seen it measured.
Q. You think it wasn't over 40 yards from the house to the ferry?
A. That is about what I judge it.
Q. Then the boat was up the creek from the ferry when you went down there?
A. The boat was right opposite the house.

Recross-examination:

Mr. MARMON. Did you help Joe Byrd, and Martin Byrd, and Jeff Campbell carry the dead man from the middle of the road up the creek there and lay him down?
A. I said I helped Martin Byrd and Joe Byrd to take him up to the house.
Q. I say, did you help to carry this man who was laying dead up there on the creek?
Q. No, sir; I never put my hands on him.
Q. Did they carry him up there in your presence?
A. No, sir.
Col. GRACE (to witness). When you heard the firing how come you to break right for the ferry at once?
A. I ran down to see what was the matter; I didn't know what was the matter; I didn't know what had taken place.
188 Q. You knew it was at the ferry, though?
A. Yes, sir; but I didn't know what was taking place.
Court here took recess until 1:30 p. m.

189 1:30 P. M.

(Carbary's "F.")

MARTIN BYRD recalled.

Col. CLAYTON. What direction does that creek run?
A. From the west to the east into the Arkansas River.
Q. (Showing map.) This represents the Arkansas river and this creek. Is that about right—did you see that when it was made in my office—is that about right?
A. Yes, sir.
Q. Can you point out your house on that map?
A. The house ought to have been here.
Q. How far is your house from the ferry?
A. About 100 yards.
Q. How far is your house from the creek opposite?
A. Just about 100 yards from the mouth of the slough.
Q. And the ferry is near the mouth of the slough?
A. Yes, sir.
Q. Is the creek any nearer—how near does it go to your house in the nearest place?
A. About 40 yards the nearest place.

Q. This man Boyd, when he ran, ran up the creek and closer to your house?

A. Yes, sir.

Q. The boat came up there and got you?

A. Yes, sir.

Q. Did you go right at once and get Boyd?

A. I staid here on the other side of the creek right there at Boyd and Boyd was over on this side.

Q. Boyd was on the opposite side from your house?

A. Yes, sir; I went back from where Boyd was down the creek a piece and just stepped on the boat, I reckon it was about 50 yards,

190 and met the boat?

Q. You went down the creek about 50 yards and met the boat?

A. Well, it was just in sight of Boyd.

Q. Where were you when Simon Dansby came, him and——

A. I was on the boat when they came.

Q. Where is that sycamore tree that the boat was tied to?

A. There is only one sycamore tree, right at the mouth of the slough, and there is one stands right in front of the house, that is a little way up the cache from the slough.

Q. Which one was it your boat was tied to?

A. The one that was up cache right in front of the house.

Q. Is that the road the man was lying in [showing map]?

A. No, sir; he wasn't in the Skullyville road; he was in the trail here right in front of my house, the one that comes from my house down to the boat.

Q. What kind of a sycamore tree is it?

A. One of those that bears a little round ball.

Q. What is the difference? Can you describe the difference between the two trees?

A. This one that stands at the slough was stooped, and this one here in front of the house had a stump standing in the middle of it, and that is the one the boat was tied to.

Q. Who moved the body out of the trail?

A. I and brother Joe.

[Col. Clayton shows map to jury.]

Cross-examination:

Mr. BYERS. Did any one help you except you and your brother?

A. Why, Simon Dansby was there in the house, him and Jeff Campbell.

191 Q. Was it you and your brother moved the body of Davis?

A. Yes, sir; me and my brother.

Q. Anyone else there?

A. No, sir; they were at the house.

Q. There was no one at the place when you moved him?

A. No, sir; not that I noticed.

Q. What did you do with the horse while you were moving him?

A. I hitched him to a tree.

Q. That was after you had taken old man Dansby to the house?

A. Yes, sir.

Government rests.

192 Thereupon the Government closed its case in chief.

The defendants, to maintain the issue on their part, produced and examined the following-named witnesses, to wit: J. R. Cole, John Goodnight, Bud Harris, Robert Topping, James Macghee, Dr. R. W. Foyle (recalled), Eugene Standley, Martin Byrd (recalled), and John Taylor, who testified, respectively, as follows:

193 *Testimony introduced by defense.*

J. R. COLE.

Mr. MARMON. What business do you follow?

A. Farmer, and marshal for the territory.

Q. Do you know Martin Byrd?

A. Yes, sir; when I see him.

Q. State if you ever saw him on Cache Creek, at the crossing there where the shooting is said to have occurred.

A. Yes, sir; I saw him one evening.

Q. I will ask you if he made any statement as to whether or not that was the place where the shooting occurred?

A. He said the shooting was 4 miles above there on Cache Creek, on the same creek.

Q. [Showing map to witness.] Is that about the direction the creek runs there, and the direction of the road?

A. That is a pretty good diagram.

Q. How does it run, say, for 100 yards or 2 from the south—what is the nature of it, straight or crooked?

194 A. I don't know the distance, but right above the ferry it runs up straight a piece; I don't know how far.

Q. What direction?

A. West.

Q. West?

A. The creek runs west, right smart south of west. From the road down that hill I never paid much attention; I crossed it many a time.

Q. Anyhow, it runs down from the ferry straight for a distance, and it turns off in that direction?

A. Yes, sir.

Q. This road runs up here and runs in that way; then turns up here again?

A. Yes, sir.

Q. But the slough runs directly opposite the ford, does it?

A. Yes, sir.

Q. Just above Rock Ford, just at the edge of Rock Ford on this second bench, did you notice where there had been a fire built?

A. I noticed some ashes where it had been some time before that.

Q. Leave out of the question the directions, the points of the compass, how does this map correspond with the location there? There is the ford. Is that the relative positions of the ford and Byrd's house and his lot here, leaving out of the question the directions?

A. Yes, sir.

Q. About what distance from here down to the ford?

A. About 200 yards or 150; somewheres along there.

(Mr. Marmon explains map to the jury.)

Q. Did I ask you about that sycamore tree?

A. No, sir; not yet.

Q. I will ask you if there was a sycamore tree there? Your attention was called to it.

A. Yes, sir; there is a sycamore tree stands right where that
195 slough runs into the creek right at the crossing, but whether it is a sycamore I disremember.

Q. Do you know where that man Myers is said to have fallen?

A. No; nothing; only hearsay.

Q. Well, where he is said to have fallen?

A. Some says he fell 30 feet and some 20 out from the first bank from the water.

Col. CLAYTON. That ain't evidence. I ask that that be ruled out.

The COURT. Yes; he don't know anything about it.

Mr. MARMON. The witness for the Government this morning said he fell out there.

The COURT. Well, he located it. Mr. Cole does not know.

Col. CLAYTON. You are presenting a map to the jury made by yourself.

Mr. MARMON. I will leave that sycamore tree off. I will say, then, that Mr. Cole has located a tree there. If it makes any difference whether it is a sycamore or a hickory or a walnut all right. There is the tree right at the ford where the boat is said to have been tied. This is the second bank. There is where the ashes were Cole saw. (To witness.) Do you know anything further about this case? Did you ever hear Martin make any statement as to how the killing occurred?

A. I never did.

Cross-examination:

Col. CLAYTON. You think that map is correct, do you, as you understand it? You see the stream runs east and west, Casche Creek; then the road runs north and south?

A. The road from Skullyville seems to me—I never paid attention—seems to run northeast, and when it crosses the stream it seems to me like pretty near north and south.

Q. Look at that and see if the stream does not run north and
196 south and the road the other way, that is, the north. Is that right?

A. If that is the north side of the map it is wrong. This ought to be north.

Q. Now, how is that map [showing Government map]? Wouldn't that be about right?

A. I think that is a correct location of the stream myself. That tree is not in the right place.

Q. What did you go out there for, you and Mr. Marmon?

A. I live about 10 miles from here, and Mr. Marmon came along, and I was down at Alexander's store, and he said he wanted to go out.

Q. He was going out there for the purpose of looking up this case and getting up evidence?

A. I don't know about the evidence; he said he wanted to go and look at the ground and see something about this case, and he didn't know the way and wanted me to go along with him; he saw Abe Boyd and Byrd; Abe Boyd is a brother of this man and went to look at the ground.

Q. What did he want you to go with him for?

A. He told me to accompany him.

Q. Did he want to make you a witness?

A. No, sir; he promised he wouldn't make me a witness, but if I had known I wouldn't have went.

Q. And he saw Martin Byrd and he tackled Martin?

A. We went up to Martin Byrd's and couldn't get nobody to come and show us where the killing occurred.

Q. Was the creek up?

A. Down.

Q. At the time the killing occurred the creek was up?

A. I don't think it was, if I ain't mistaken.

Q. There is a good deal of difference in the appearance of things
197 when the creek is up and when it is down, in regard to where the boat would be hitched and where the ferry would be?

A. I don't know where the boat was.

Q. Did you see the boat there?

A. No, sir.

Q. You have crossed it on the ferry?

A. No, sir; I never did.

Q. I will ask you if the ford is not above—just above the rock ford?

A. The ferry wouldn't be over the ford. The ford is shallow. The ford used to be muddy and they hauled bowlders and filled it up. My understanding is, the ferry runs right alongside of the rocks.

Q. Where was the tree, above or below?

A. Just above the rock there.

Q. You saw no ferry-boat?

A. No; none there at that time.

Q. Where did you find Martin Byrd?

A. I was setting in a buggy in the middle of the creek in the ford there, and Martin came riding down, leading a horse and riding a horse; he pulled his hat down over his eyes.

Q. He gave you to understand he was not going to tell anything about it?

A. He didn't give any satisfaction. Mr. Marmon asked him where the killing was done, and he said 4 miles above here. I said, I thought it was at the Rock Ford. He said, wasn't the Rock Ford above here?

Q. He gave you to understand he was not going to be pumped?

A. He didn't tell us anything.

Q. He knew he was a Government witness, and he knew Mr. Marmon was a lawyer on the other side, and he wasn't going to be pumped?

A. I don't know what his idea was; I know he didn't give us any satisfaction.

Q. You could tell from his manner?

198 A. He didn't intend to let us know anything about the killing or anything about the ground.

Q. Did you have a pistol on?
A. I think I did; I would be afraid to go in that bottom without it.
Q. But you went in there with your pistol?
A. Yes, sir.
Q. Were you on horseback?
A. No; buggy.
Q. Marmon beside you?
A. He was afoot at the time. Martin got down.
Q. Was he armed?
A. If he was, I don't know it.
Q. Did you have anything to drink along with you?
A. That is another question. We had plenty of water.
Q. Were you sober?
A. Yes, sir; sober.

Mr. MARMON. There was no attempt made to stop him; he was just simply asked a civil question, if that is the place where the killing occurred?

A. Yes, sir.
Q. And he said 4 miles above here; and that was all that was asked?
A. I said, "Why, Martin, I thought it was down here at Rock Ford," and he said it was above.
Q. There was no attempt made to pump him, or anything of that kind?
A. No, sir; no time for pumping, he didn't stop.

199 JOHN GOODNIGHT.

Mr. MARMON. Where do you live?
A. Near Oak Lodge, Chocktaw Nation.
Q. How long have you lived there?
A. Since 1872.
Q. Are you a citizen or a noncitizen?
A. I am a citizen.
Q. Do you know Martin Byrd?
A. Yes, sir.
Q. Do you remember about the time of this shooting that is said to have occurred in that country when Dansby was killed and Myers?
A. Yes, sir.
Q. Did you see him about that time?
A. Yes, sir; he came to my house after me in the night after the shooting took place.
Q. Did he make any statement to you there about the shooting?
A. Yes, sir.
Q. What did he say, and who did he tell you did the shooting, and all about it?
A. He just came there and told me to get up, that he had captured a man that had robbed Judge Taylor; that is, he had captured two and killed one and wounded one, and the wounded one got away, and he would like for me to come and help him to capture him.
Q. Who did he say they were?
A. He didn't know who they were; none only what he had charge of; he knew Boyd.

Q. He said one was dead?
A. Yes, sir.
Q. Did he say who killed him?
A. He said John Dansby shot him.
Q. Did you go to the place of the shooting?
A. Yes, sir.
Q. What did you find when you got there?
A. Found a dead man there on the bank of the creek. A good many people had gathered there.
200 Q. How far was it from the rock crossing?
A. The best I remember, about 30 yards.
Q. Did Byrd make any statement there as to whether that was the place he was shot at, or not, where he fell?
A. He told me before we got there; while he was loosing the chain after he came up there; while he was going to put the boys across——
Q. What did he say about where the man fell when you got there?
A. Joe Byrd said he was laying right where he was killed at.
Q. Did you notice where he was lying?
A. Yes, sir.
Q. Any blood around there?
A. Yes, sir; blood and brains were all there looked to me like; there was a good deal there.
Q. Did you notice where you crossed the ferry whether there was blood down in the middle of the road?
A. I didn't see any down near the boat.
Q. Martin didn't show you any?
A. No, sir, nor any one else; it was the general understanding——
Q. Never mind that. Joe Byrd said, though, he fell where he was shot?
A. Yes, sir.
Q. Do you know where Dansby fell?
A. Only what they told me; they told me he fell right near Davis.
Q. State what he said about how the fight came up, who was shot first, and who shot first.
A. When he came after me he told me some parties came there to the boat and he suspicioned them of being the men that robbed Judge Taylor, and while he was undoing the boat——
Q. When he suspicioned—well, go ahead.
A. He said he suspicioned them of being the men that robbed
201 Judge Taylor, and he made excuses to him; he said they called him down, and he told them Richard Butler had the key and he would have to go after it, and he said he went to the house and sent Richard after some help and another gun; then after they got back to the ferry they threw down on him and wanted to rob him while he was undoing the boat. He said that big fellow, Davis I reckon he had reference to, and that he looked up the barrel of the pistol and saw the hammer wasn't pulled back, and thought he could fall to his knees and shoot, and he fell to his knees and shot and Davis fell dead, and Dansby staggered and shot about the same time, and him or Dansby was the one killed him.
Q. Did he say for certain?

A. He said he was the man fired first. He looked up and saw this man didn't have his pistol cocked and he fell to his knees and jerked his out and fired, and Dansby fired at the same time and Davis fell.

Q. Did he say anything about when Joe Byrd fired?

A. He didn't tell much about Joe doing any shooting, only he was into it; I believe he said Joe shot Standly.

Q. I believe you said he went down to the boat and then made excuses that he didn't have the key and wanted to go back to the house to get it from Richard Butler and he sent Richard Butler off after help and another gun.

A. Yes, sir.

Q. And then they went to the boat?

A. Yes, sir.

Q. What time in the night was it when he came to your house?

A. I was asleep, but I judge it to be about midnight.

Q. How far did you live from Byrd's?

A. Near 4 miles.

Col. CLAYTON. When he jumped down on his knees and saw his chance what occurred then; did he say?

202 A. He said he threw it over his head and shot.

Mr. MARMON. That was the first shot was fired?

A. Yes, sir; that is the way he told it.

Q. And he said Joe Byrd was the one shot Standly?

A. Yes, sir.

Q. Did he say anything about who shot Boyd?

A. Yes, sir; he said Richard Butler shot him with his own gun.

Q. With Boyd's gun or Richard's gun?

A. Boyd's gun; he said it was Boyd's gun.

Q. He said he didn't know any of them when he went down there.

A. No, sir.

Q. Were you present at the house that night when Boyd was up at Byrd's?

A. Yes, sir.

Q. I will ask you if you heard any conversation there between him and Dr. Foyle?

A. No, sir.

Q. Why did you not?

A. Well, the doctor he was talking to him and he said Boyd had made a confidant of him and he could get some of the facts out of him and to stay away and he would get it all.

Q. You had known John a good while up there?

A. Yes, sir.

Q. As long as Dr. Foyle?

A. No, sir; he has been there a little the longest.

Q. Did you want to get to talk to Boyd?

A. No, sir, not particularly, I would liked very well to talked to him.

Q. Why did you not talk? Did the doctor say anything about not wanting anybody else to talk to him?

A. He said the balance of us better stay away; John had made a confidant of him and he wouldn't tell anybody else.

Q. He did not talk loud enough for anybody else to hear except Foyle?

A. No, sir.

203 Q. Did he come around every once in a while and tell you what he had said?

A. Yes, sir.

Q. Then he would go back and get some more? Do you know the general reputation of Martin Byrd and Joe Byrd in the community where they live for being truthful men—for truth and veracity?

A. No, sir——

Q. Yes or no. Say Martin Byrd; do you know his general reputation for being a truthful man in the community—how he is regarded?

A. Well, he is not regarded as being reliable.

The COURT. That is, before this occurrence?

A. Yes, sir.

Mr. MARMON. Do you know it?

A. Yes, sir.

Q. Is his reputation good or bad?

A. Bad.

Q. Do you know Joe Byrd's reputation in that country in that respect?

A. Yes. sir.

Q. Is it good or bad?

A. It is bad; about the same.

Q. Did you see Davis' hat there?

A. Yes, sir.

Q. How far was that from him when you saw it?

A. Well, they had carried it up at the house, some of them.

Q. It had a bullet hole through it, didn't it?

A. Yes, sir; I think it did. I didn't have it in my hands at all.

Q. Did you examine the wound in Davis' head?

A. Yes, sir; I looked at him.

Q. How was that wound; did it go straight through or angling?

A. It seemed to go a little low behind and pretty high up in front. He had a sloping forehead, the best I remember.

Cross-examination:

Col. CLAYTON. You talk about his only having one wound. Why do you say pretty high up on the forehead? Only one wound?

A. Yes, sir.

204 Q. Only one wound. Wasn't he shot but once?

A. That is all I know.

Q. Wasn't he shot in the eye?

A. Not that I remember.

Q. You only saw one wound?

A. Yes, sir.

Q. You looked pretty close?

A. Tolerable close; I helped to lift him in the wagon.

Q. You didn't see any in the eye?

A. No, sir.

Q. Now, then, where do you live?

A. 4 miles beyond Oak Lodge.

Q. How far from Abe Boyd's?

A. Near 5 miles, I reckon.

Q. You and Abe are pretty intimate?
A. No, sir; no more than any other friends.
Q. You and John Boyd were pretty intimate?
A. No, sir; no more than we met up once in a while; raised in the same settlement.
Q. You were raised together; are you a white man?
A. Yes, sir.
Q. What is Boyd considered?
A. A white man.
Q. Raised in the Indian country together?
A. Yes, sir.
Q. About the same age?
A. I reckon I am the oldest.
Q. How much? What is your age?
A. I am 32 next November.
Q. How long have you lived in the Indian country?
A. Ever since 1872.
Q. Where did you come from to there?
A. Missouri.
Q. Do your folks live up in the Indian country?
A. No, sir; only I got a couple of sisters.
Q. Did you go there with your father to the Indian country?
A. No, sir; I came with my mother and stepfather. My father was dead.
205 Q. How far did you live from Martin Byrd?
A. It is near 5 miles.
Q. Did you see any of these stolen things these men had there?
A. Yes, sir; they had some goods.
Q. What?
A. The best I remember, clothing, shoes, and pants and some underwear.
Q. Did you see anything of a gun there?
A. Yes, sir; a double-barrelled shotgun there.
Q. Did you see anything of a pistol that was taken from him?
A. Yes, sir.
Q. Martin Byrd came to your house about 12 o'clock or one at night?
A. The best I remember; it was.
Q. He told you he had gotten hold of the fellows that robbed Taylor?
A. Yes, sir.
Q. How long had it been since Taylor was robbed?
A. I don't remember; probably a month or longer.
Q. Where did Taylor live at that time?
A. On Buck Creek Prairie.
Q. How far from this place?
A. 6 or 7 miles, I reckon.
Q. Taylor had been robbed about a month before?
A. It might have been longer.
Q. 6 weeks, then.
A. Somewheres near that.
Q. Martin told you he had got the fellow that robbed Taylor?
A. Yes, sir.

Q. Taylor is here?
A. Yes, sir.
Q. He told you Boyd was one of them, didn't he?
A. He told me Boyd was one of the men they had up there at his house.
Q. That he captured him?
A. Yes, sir.
206 Q. And the other was wounded and got off?
A. Yes, sir.
Q. Did he tell you who that was?
A. No, sir.
Q. Did he tell you his name was Eckles?
A. No, sir; he called him the little fellow.
Q. Then the other was the big fellow?
A. Yes, sir.
Q. That was Davis?
A. Yes, sir.
Q. The one dead?
A. Yes, sir.
Q. He told you when he first saw them he told them he didn't have the key. Where did he say he sent Butler to get the gun?
A. To John Dansby's, or Richard's, or Joe Dansby's.
Q. And when he came back they went down to the ferry?
A. Yes, sir.
Q. And these three men were there?
A. Yes, sir.
Q. He told you that?
A. Yes, sir.
Q. At the ferry?
A. Yes, sir.
Q. Then he told you that he undertook to unlock the chain and Davis pulled out his pistol and told him—I will ask you if he didn't say to you as he was unlocking the chain that Davis pulled his pistol and told him him to give him his money?
A. He threw down on him and said something or other.
Q. About him going to rob him?
A. Yes, sir.
Q. It is very strange that you can tell his exact language with regard to everything else, yet when you come to that point you cannot give me his exact language?
A. The best I remember, I can.
Q. Did he tell you he told him to give up his rusty pennies or nickels?
A. Yes, sir; he said that part of it.
Q. Davis told him to give up his rusty nickels. That was
207 that night?
A. Yes, sir; I think it was.
Q. At the place he told you that?
A. Yes, sir.
Q. He stated the language at your place he threw down on him, and tried to rob him, and when you got to the house he told you that Davis told him to give up his rusty change, and he then looked at the pistol and

he saw the hammer was not pulled back, and he thought he had a chance to get to his knees and get his out, and did, and fired, and at that time Dansby fired too?

A. Yes, sir; and somebody on the slough.

Q. I thought you said Dansby was staggering?

A. Yes, sir.

Q. Then the man was shot—the man that shot Dansby must have shot before that?

A. Near, about that.

Q. He must have fired before that. He told you when he pulled his pistol and fired Davis and Dansby fired about the same time, but before Dansby fired Dansby had been shot and was staggering. If he and Dansby fired about the same time and Dansby was staggering at the time, somebody must have shot before that. In your statement to Mr. Marmon you made the statement that Martin told you that Dansby didn't fire until he was shot or staggering, reeling?

A. That is the way he said it.

Q. And that Dansby fired about the same time that he, Davis, fired?

A. Yes, sir.

Q. Therefore, the man that shot Dansby from that statement must have shot first?

A. It seems like it.

Q. Then why did you tell Marmon that?

A. I was telling the conversation as near as I could.

Q. You may be mistaken about these little things?

A. I wouldn't be positive.

208 Q. You have got it now, the man that shot Dansby fired first and shot Dansby?

A. I don't understand your question.

Q. I will repeat it? He told you that he looked at the pistol and saw it wasn't cocked and he saw his chance?

A. Yes, sir.

Q. When he saw his chance he fell to his knees and drew his pistol and fired, and Dansby fired about the same time, and he didn't know who killed Davis, he or Dansby?

A. Yes, sir.

Q. And Dansby fired after he was shot and staggering—Dansby did his shooting while he was staggering?

A. He said Dansby was staggering.

Q. Reeling around. Your language was, that when Dansby shot he had been shot, somebody had shot him and he wheeled around and staggered, and fired, and fell, and that he didn't know who it was shot Davis, he or Dansby, on that creek?

A. As well as I remember.

Q. And Dansby was shot while he was staggering—I mean, Dansby did his shooting while he was staggering. That is what he told you. You have stated it?

A. He said Dansby was shot in the back from somebody upon the slough.

Q. And was staggering when he fired his Winchester?

A. Yes, sir.

Q. Now then, we have got that. That puts it that somebody did the first shooting and not Martin Byrd. Now then, when he was talking about this case there was a good deal you had to listen to. You might get it confused, might you not?

A. Certainly, I can't be so very positive in telling just the exact language.

Q. Nor the order in which they occurred. How far did he say he was from this man when he fired from Davis? How close was Davis to him?

A. He said he was right again him.

209 Q. And didn't he tell you he was down at the end of the boat undoing the chain?

A. Yes, sir.

Q. Then Davis must have fallen near the boat?

A. Yes, sir; according to his statement.

Q. Then it wasn't generally understood that he had fallen 20 or 30 feet from that place, because he told you where he fell?

A. He told me he fell near the boat there.

Q. And he told you that before you went down to see the body?

A. Yes, sir; but the body wasn't there.

Q. He had crossed the creek and came down after you?

A. Yes, sir; Joe Byrd told me he was laying right where he was killed.

Q. But he had told you he dropped right near the boat at the end of the boat?

A. That is where he told me the fight occurred.

Q. How long a chain was that?

A. I don't remember; it wasn't very long, though.

Q. Where was the boat hitched when you came over that night?

A. It was on this side.

Q. Where did it land when it got on the side where the dead man was? At the wagon crossing?

A. There is two wagon crossings. There was a slough came in at the side of Martin's house; we crossed above the slough 6 or 8 feet; we landed from the mouth of the slough.

Q. Wasn't there a path there that goes up to the house—a trail?

A. Yes, sir.

Q. Did you land in that trail?

A. Yes, sir; there is another way to go to the house. There is

210 the Skullyville road there; it lands on the right-hand side of the slough.

Q. And you landed on the left-hand side of the slough?

A. Yes, sir.

Q. Was the creek up at that time?

A. Yes, sir; slightly up, it was past fording.

Q. That is, above the horse's belly?

A. Yes, sir.

Q. So you had to use the boat?

A. Yes, sir; it was too deep to ford, I think.

Q. Did you see the body when you went up to the house?

A. Yes, sir.

Q. Did you see any wounds upon him?
A. No, sir; except I believe there was a wound in one of his ears, may be.
Q. Did you see Butler?
A. Yes, sir.
Q. Was he shot through the clothing?
A. He showed me a place where he was glanced across the side.
Q. Were you present when that was discovered?
A. I don't remember.
Q. He is the man shot Boyd?
A. Yes, sir.
Q. Richard Butler was shot where?
A. I don't remember which side; it glanced on one side or the other.
Q. Just went through his clothing?
A. Yes, sir.
Q. Dansby was shot in the back. Richard Butler's clothing was shot with what?
A. It looked like a ball.
Q. And Davis was dead?
A. Yes, sir.
Q. And Boyd was shot with small shot?
A. Yes, sir.
Q. Now then, didn't Byrd tell you that that gun had been put upon the boat?
A. I think he did.

Q. Told you the gun had been put upon the boat? Did he
211 not tell you these men told them they only had one gun?

A. He said something about that after we got on the ground.
Q. Did he not tell you one of them took the gun out of another's hand, and take it down and lay it upon the boat?
A. It seems to me he did.
Q. Then did he not tell you that Richard Butler picked up that gun from the boat and shot Boyd?
A. Yes, sir; he said Butler shot Boyd with his own gun, and then——
Q. And then Boyd turned and run and hallooed?
A. No, sir; he said he recognized Boyd's voice, and he run up the creek. Boyd had, and he couldn't get up the bank, and he run up there and held him until these came. He said he left a pistol in the water.
Q. Did he tell you Boyd had two pistols, and he threw one in the water and got the other?
A. I don't know that he did, but the others did. He had two pistols.
Q. Did he tell you that when they arrested Boyd that Boyd asked where he shot John Dansby, and some of them said in the back, and he said I intended to break his back?
A. No, sir; I never heard that; I heard it talked by others.
Q. Well, I want to get what Martin Byrd told you.
A. He never told me that.
Q. But he was shot in the back, Dansby?
A. Yes, sir; I never saw the wound myself.
Q. You seemed to be there looking at the wounds on the dead man and Boyd; why not look at the wounds on Dansby?
A. Well, his people were all there, crowding in the house.

Q. Nothing but a nigger, anyhow, and the others were your friends?

A. I didn't know any of them except John Boyd.

212 Q. He was the only one of the crowd that was there alive. He made all these statements to you that I have mentioned except the fact of Boyd's say he shot the man in the back?

A. Yes, sir.

Q. Or that he intended to break his back?

A. Yes, sir.

Q. Was it at your house that Martin told you that these men tried to rob him?

A. Yes, sir.

Q. The first thing he stated to you, he said they were trying to rob him?

A. I don't remember that he said they tried to rob him that night. While he was at my house he was excited. He told me right smart about it. He thought he had captured the men that robbed Taylor.

Q. The statement you told us was: when he came down there, Davis drew his pistol and was trying to rob him, but when he got up to the house Davis threw his pistol on him and told him to give up that rusty change. That is the distinction you made before?

A. He said something about that, but I don't remember him saying that at my house.

Q. He told you about giving up the rusty change after you got to his house?

A. Yes, sir.

Q. But he did tell you at your house they made an effort to rob him?

A. No; that was at his house.

Q. Didn't he tell you at your house they tried to rob him?

A. Well, he said that fellow threw down on him and said something or other.

Q. About giving up the rusty change?

A. I wouldn't be positive, but I think he did say that at my house.

Q. When you came there and saw Davis he was not at the place you expected to find him?

213 A. No, sir; not from what Martin had told me; I expected to find him near the boat.

Q. You went there with him?

A. No, sir.

Q. He went there and asked you to come?

A. Yes, sir.

Q. You told him you would come?

A. Yes, sir.

Q. He knew you were going there to see it?

A. Yes, sir.

Q. When he told you he fell near the boat he knew you would be there and see it?

A. I reckon he did.

Q. And you found the man at a different place from what he had told you?

A. Yes, sir.

Q. Now, you talked about the character of those two nigger men. Martin Byrd, he has been here charged with larceny?

A. I have heard of it, and convicted.
Q. That is one of the reasons why you think his character is bad?
A. That is one.
Q. Wasn't that the principal reason?
A. Well, the most I know about it, the people say he is overbearing.
Q. That is the most you know of his character; people say he is overbearing?
A. Yes, sir; him and his brother both.
Q. Otherwise, as far as you know, they are good men?
A. Yes, sir; as far as I know. They are not considered so by a great many.
Q. You say they are overbearing and that is all you know against them?
A. Well, they are not considered reliable.
Q. That is because Martin Byrd has been convicted of larceny? Of course, that puts him under a shadow, don't it?
A. I reckon it does.
Q. How close do you live to them, Martin Byrd?
A. About 5 or 6 miles I reckon.
Q. You don't live in the bottom?
A. No, sir.
214 Q. There is a great many colored people living in the bottom there?
A. Not many where Martin lives; only 3 or 4 families live there.
Q. It is lower down where the large colored settlement is?
A. Yes, sir; near the Arkansas River on Fort Coffee there is a large settlement, and a good many around Skullyville.

Redirect:

Mr. MARMON. You say they are not considered reliable and the people say they are overbearing?
A. Yes, sir; I know that.

215 BUD HARRIS.

Mr. MARMON. Where do you live?
A. Near Skullyville.
Q. Are you a citizen there?
A. No, sir.
Q. How long have you lived there?
A. 2 years.
Q. How long have you lived in the nation?
A. 11 years.
Q. Up there in that same community? I will ask you if you know Martin Byrd and Joe Byrd?
A. Yes, sir.
Q. Do you know their general reputation for being peaceable, law-abiding citizens?
A. Well, they are overbearing.
The COURT. This is as to their truthfulness.
Mr. MARMON. I am asking as to their being peaceable and quiet, too.
Col. CLAYTON. You can't ask that in this kind of a case.

Mr. MARMON (to witness). Do you know about the time this killing is said to have occurred up there?

A. Yes, sir.

Q. Did you see Martin Byrd right after that?

He came to my house.

Q. Did you have a conversation with you about this killing?

A. Yes, sir.

Q. What did he tell you?

A. He told me there was some killed up there and he wanted me to come up with him. I asked him who, and he didn't know who was killed. He said John Boyd was in the crowd. I asked him if he had arrested John. He said, Yes; shot him. He said, "There is one laying there; we have killed one," and he wanted me to come up and see him.

Q. Did you go over there?

A. Yes, sir.

Q. Did you see the man?

A. Yes, sir.

Q. Where was he lying?

216 A. On the second bench from the water.

Q. How far from the rock ford above?

A. I guess it is 35 steps from the ford to where he was lying.

Q. Was there any blood or anything of that kind about him?

A. Yes, sir; blood run out from under his head where he was lying; some brains laying there, too.

Q. Did Martin make any statement to you as to where he was killed?

A. He said he was lying right there; we have never touched him; when we started over from my house.

Q. And there is where you found him. Did he mention Tandy Walker's name in any way?

A. He told me he had been to Tandy before he came to my house and he said Tandy would be on and for me to wait; he wanted him to come up.

Q. Did he say anything about fixing up——

Col. CLAYTON. Now, now!

Mr. MARMON. What did he say about Tandy Walker?

A. I don't remember what he did say. He just told me, "I want to see Walker." He has promised to meet him here; he said something about it, but I don't just remember exactly what it was. He said he wanted to fix up about the man that was killed some way, and I didn't pay no attention to it. I didn't aim to be a witness in the case and never thought any more about it.

Q. You went over there and found him lying on that second bench? Did you see the body? Did you go up to the house then?

A. Yes, sir.

Q. Who was there at the house?

A. Several there; I don't know who all; Jim McGhee—I don't know who all, and Ed. Bowman; Dr. Foyle, too, I think.

217 Q. Was he in conversation with Boyd?

A. Yes, sir.

Q. Did you talk to him any?

A. No, sir.

Q. Why?

A. We were talking about talking to him. I didn't say anything, but some of the parties named that they wanted to talk with him; and Dr. Foyle said he made a confidant of me and let him talk to me.

Q. Not to let anybody else there?

A. No, sir.

Q. So you all did not talk to him?

A. No, sir.

Q. Did Byrd tell you anything about when the parties first came down there after him to go to the ferry?

A. Yes, sir; he told me something about it. He first told me they wanted to rob him, wanted his little rusty change?

Q. That is what he told you at first?

A. Yes, sir; I don't remember just exactly.

Q. Did he tell you about sending off anywhere?

A. He sent after a key some way and when he came back they brought arms.

Q. He said he went down to the boat first, did he?

A. Yes, sir; and told them the key was gone, and had to go back after the key?

Q. Then he put them off by saying he had to go back after the key?

A. Yes, sir.

Q. Then he went back after the key. What did he do then?

A. He got some men and came in on them.

Q. And then when they got to the ford down there, then it was they tried to rob him?

A. No, sir.

Q. He didn't tell you he tried to rob him when he first went down there?

A. I don't remember whether it was the first or last; no, sir.

218 Q. John was suffering a good deal that night, wasn't he?

A. Yes, sir; seemed to be.

Q. When did they move Myers?

A. Next morning.

Q. He wasn't moved until the next morning?

A. No, sir; I left there a little after sun-up. They moved him while I was gone.

Cross-examination:

Col. CLAYTON. You say you are not certain whether Martin told you that he had sent for these men before or after the shooting?

A. No, sir.

Q. You stated you didn't know whether it was before or after they tried to rob him?

A. No; I don't know how that was.

Q. I think you want to do justice to that darkey?

A. Yes, sir.

Q. I believe you are charged with an offense yourself at Muskogee?

A. Yes, sir.

Q. You know how it is?

A. Yes, sir.

Q. Do every man justice. What offenses are you charged with?

A. Larceny.
Q. How long have you known these men?
A. I have known Boyd a good while.
Q. Brought up with him?
A. I have known him about 7 or 8 years.
Q. How long have known Goodnight?
A. About the same.
Q. You and Boyd and Goodnight have all been friends there together?
A. Yes, sir.
Q. All about the same age?
A. Yes, sir.
Q. All living there in the Indian country together?
219 A. Yes, sir.
Q. All white men living in the Indian country together, in the same neighborhood?
A. Yes, sir.
Q. I want to try, if I can, and get this conversation a little more definite than you have given it. You have said that it was Martin Byrd that came to your house?
A. Yes, sir.
Q. That was after the shooting?
A. Yes, sir.
Q. He told you that he had seen Tandy Walker?
A. Yes, sir.
Q. Tandy is a responsible Choctaw in that country?
A. Yes, sir.
Q. And a leading man in that country?
A. Yes, sir.
Q. He has been an officer there for many years. Do you know what office he holds now?
A. Yes, sir; deputy for the United States court at Mc'Alester.
Q. A leading Choctaw Indian. He told you he had been there and wanted to meet him; he promised to come down, and he wanted him to come down there in order to tell him to do about that dead man?
A. Well, he wanted to fix it up; I don't remember just the words.
Q. He had killed a man and another was wounded, and he went to that leading citizen to get him to come down there to assist him. There was nothing wrong in that, was there?
A. I don't think there was.
Q. He said nothing that led you to think there was anything wrong about that?
A. No, sir.
Q. Now, then, in this conversation that he had with you, that was just after the shooting, wasn't it?
A. Yes, sir.
Q. Did you hear the shooting that night?
A. No, sir.
220 Q. How far do you live from there?
A. 3 miles.
Q. When you got there there was a good deal of excitement?
A. Seemed to be; yes, sir.

Q. He told you there had been some shooting down there?
A. Yes, sir.
Q. He told you these men were there trying to rob?
A. He said something about robbing; I don't remember just exactly how it went.
Q. He wanted some little rusty change. He used that expression, didn't he?
A. Yes, sir.
Q. He told you that just right after that shooting?
A. Yes, sir.
Q. Didn't he tell you it was a big man by the name of Davis that demanded of him the rusty change?
A. I don't remember whether he told me that or not.
Q. The conversation is not very distinctly fixed in your mind?
A. He was telling me while I was fixing to go; he seemed to be excited and scared, and while I was getting my horse he was telling me, and I never paid much attention to it.
Q. For instance, he told you he had been to see Tandy Walker?
A. Yes, sir.
Q. And had killed a man?
A. Yes, sir; he said he had killed a man up there and had a terrible fight.
Q. Did he tell you anything about Taylor?
A. Yes, sir.
Q. That he thought these were the men who robbed Taylor?
A. I don't remember.
Q. At any rate he told you these men were there trying to rob him?
A. Yes, sir; they wanted his little rusty change, I believe he said.
221 Q. Did he tell you anything about Boyd swimming the river?
A. Yes, sir.
Q. Anything about what Boyd said when they arrested him about shooting Dansby in the back?
A. He said something about it.
Q. What did he tell you Boyd said? Didn't he tell you this: that when Boyd ran, after he was shot, with the gun and swam the river, that he ran after him?
A. Yes, sir.
Q. And they brought the boat down, and they got Boyd on, and some of them asked why he shot Dansby, and told him he shot him in the back, and he said he tried to break his back?
A. No, sir; he told me that John shot him, but I don't remember how he said he shot him.
Q. You remember he did tell something about what he said about John shooting Dansby?
A. Yes, sir.
Q. I will ask you if he didn't tell you that John Boyd was the man that shot Dansby that night?
A. I don't remember whether that night or next morning.
Q. But in the conversation he had there he did tell you Boyd was the man shot Dansby?
A. Yes, sir; that is what he said.

Q. Did you not hear Dansby say, while lying there, that Boyd was the man shot him?

A. No, sir.

Q. Did you hear him say the man out on the porch was the man shot him?

A. No, sir.

Q. At any rate, Martin claimed Boyd was the man who shot Dansby?

A. Yes, sir.

Q. You remember that expression of the "rusty change?" Do
222 you remember that he said that he was putting the key in and unlocking the chain when they drew their pistols on him and demanded his rusty change?

A. He said he was unlocking the chain and they demanded his rusty change. He told me he was just stooping over this way and was unwrapping it.

Q. It was locked?

A. I don't know; I think he did keep it locked.

Q. Then, did he say he drew his pistol on him and demanded his rusty change—did he not tell you that the man drew his pistol on him and fired at him?

A. That is what he said.

Q. Did he not tell you that after the man fired at him—that as the man fired he dropped to his knees and pulled his pistol and shot him?

A. Yes, sir.

Followed by Riders "G."

223 (Copy.)

(Rider's "G".)

Q. How far does Tanda Walker live from you?

A. He lived about 3 miles.

Q. I will ask you if he didn't tell you that Boyd was the man who fired the first shot that killed Dansby?

A. I don't remember whether he did or not.

Q. You don't know how that was; you won't say that he did or didn't?

A. No, sir.

Q. You do remember about his shooting Davis; how he told you that was?

A. Yes, sir; he told me he shot Davis.

Q. He said Davis fired at him and it went over his head into the water?

A. Yes, sir; he said it went over his head.

Q. Did he tell you that he was standing there at that boat where that chain was when he shot Davis?

A. Yes, sir; he said he was on his knees, dropped on his knees, and Davis shot at him and he dropped to his knees and raised up and threw the pistol over and pulled the trigger.

Q. Davis fell?

A. Yes, sir.

Q. Didn't he say he shot him again?

A. I don't remember whether he did or not.

Q. The second time as he ran off and hollered?
A. I don't remember how that was.
Q. He told you where he shot him—shot him in the head?
A. Yes, sir.
Q. When you went there you found him shot in the head?
A. Yes, sir.
Q. How many times?
A. I couldn't see but one.
Q. Didn't you see a ball here in the eye?
224 A. No, sir; I noticed, but I couldn't tell whether there was a ball there or not.
Q. Was it not claimed there he was shot in the eye?
A. Yes, sir; but I couldn't tell whether it was just the eye busted out or a shot.
Q. The eye was bursted out?
A. Yes, sir.
Q. Of course, you couldn't tell what done it?
A. I guess it was from the shot; that was what I 'lowed.
Q. Then there would be one shot here and one in the eye, that would be two shots, wouldn't it?
A. If there was one in his eye, that would be two shots.
Q. The eye was bursted out anyway?
A. Yes, sir; it could have been busted out from this shot. I 'lowed that this shot in the head caused the eye to bust out.
Q. Didn't that shot in the head come out behind?
A. Yes, sir; but I have seen things shot in the head and the eye come out too; I don't know how that was though.
Q. At any rate there was an eye popped out?
A. Yes, sir.
Q. If he wasn't shot in the eye Mr. Martin Byrd was just simply mistaken about shooting him in the eye; missed him instead of shooting him, that is all?
A. Yes, sir.
Q. Where did he tell you he was standing when he shot him?
A. He told me he was on his knees. He ris from his knees. He was on the boat I believe. It was right when he was getting that chain.
Q. He told you he was on the end of the boat getting the chain; was it on the end of the boat or at the tree?
A. On the end of the boat getting the chain, I think.
225 Q. How close were the two men together, Davis and he?
A. If he was on the boat I guess they was 15 or 20 feet.
Q. From the place where you saw the body?
A. Yes, sir; I should think it was about that far.
Q. When you said 20 or 35 yards above the rock ford you didn't mean it was 25 or 30 yards above where the boat landed?
A. No, sir.
Q. Only about 20 feet?
A. Yes, sir.
Q. If he stood upon the end of the boat when he shot Davis, where you saw the body lay, it was about 20 feet?
A. Yes, sir.

Q. But if you had not seen the body, his telling you that he stood on the boat there at the chain, where would you have expected to find the dead man?

A. I expected to find him near the boat. From what I understood I thought he must have been in 2 or 3 feet of him.

Q. When you went there he was not where you expected to find him, was he?

A. No, sir; not from what he told me.

Q. He told you that knowing you were going there?

A. Yes, sir; he knowed I was going, getting ready all the time.

Q. Did you go with him?

A. Yes, sir.

Q. From what he told you, you expected to find him lying at the boat, but you did not; you found him 20 feet off. Did you examine him that night—look at him?

A. No, sir; I didn't touch him at all.

Q. You went up to the house?

A. Yes, sir; I walked up and looked at him, and went up to the house.

Q. At the house you found Dansby with a mortal wound upon him, shot in the back?

226 A. Yes, sir; that is what they said; I didn't see him at all.

Q. Didn't you see the man at all?

A. No, sir.

Q. Didn't go in the house?

A. No, sir.

Q. Could you hear him?

A. Yes, sir.

Q. Did he seem to be in much pain?

A. Yes, sir; seemed to be in right smart.

Q. How did he express himself?

A. Just groan like a person that was sick or something.

Q. How was the other man, Boyd?

A. He was groaning too.

Q. He was scared to death?

A. I couldn't tell you.

Q. Didn't he think he was going to die?

A. I don't know; I never asked him; I didn't talk with him at all.

Q. How did he act?

A. He was just laying there groaning.

Q. Didn't he groan as much as the other man?

A. I expect he did.

Q. Just had his skin peppered?

A. I didn't look at him either.

Q. You saw Dr. Foyle talking to him?

A. Yes, sir.

Q. The object of that talk was to find out, was it not, the crimes he had committed?

A. That is what Mr. Foyle said; was to find out if he was engaged in the robbery of Mr. Taylor, a neighbor of his.

Q. Did he tell you that night what John told him, Dr. Foyle?

A. No, sir.

Q. He kept that to himself; he didn't tell you?
A. No, sir.
Q. But they were talking together, Dr. Foyle and John Boyd?
A. Yes, sir.
Q. Did you see anything of a dry-goods store laying around there somewhere?
A. Yes, sir; I seen some goods there.
227 Q. What kind of goods did you see?
Mr. MARMON. I suppose it is unnecessary to make objections each time to the introduction to this evidence?
The COURT. Yes, sir.
Col. CLAYTON. What did you see there?
A. I seen some clothes.
Q. Any boots?
A. Yes, sir; I believe some boots.
Q. Shoes?
A. I don't recollect whether there was any shoes or not.
Q. There was a sack full of things?
A. Yes, sir; some things in a sack.
Q. Where did you see that?
A. I don't remember where I did see it first.
Q. Had it been carried to the house before you saw it?
A. Yes, sir; I don't remember, I don't think it was at the creek—yes, it was at the house.
Q. You found the dead man within 20 feet of the nose of the boat?
A. Somewhere about that, I wouldn't say just 20 feet.
Q. Now, then, did you see this sack of things down there after you got there?
A. No, sir; I don't think there was any sack of things there.
Q. They were taken to the house?
A. Yes, sir; I saw them at the house.
Q. Did you see the knives that were found?
A. Yes, sir.
Q. How many?
A. I don't remember how many.
Q. Did you see the knives that were given to Dr. Foyle by Boyd?
A. I seen some of the knives.
Q. Did you see the knives that were found in the coat?
228 A. Yes, sir.
Q. Where was the coat found?
A. Up the creek.
Q. That is the place where John swam the creek, isn't it?
A. Something near that; not right at the place.
Q. Did you help to find that coat?
A. I wasn't the first one to it; I was helping to hunt it.
Q. What was found in the pockets?
A. Some knives.
Q. See if these are the knives? (Witness examines knives.)
A. I don't know, they were something like that; I think I seen 1 or 2 like this, I don't remember seeing either one of these. (indicating.)
Q. You saw some like these?

A. Yes, sir.
Q. New knives?
A. Yes, sir.
Q. Was there anything else found in the coat?
A. I don't remember that there was; may be there was some perfumery.
Q. How many bottles of perfumery in the coat?
A. I don't remember.
Q. Do you remember anything else?
A. No, sir; I don't know who it was that taken the coat up; I didn't take it up.

Redirect examination:

Mr. MARMON. Mr. Clayton asked you if you were not charged with something at Muskogee?
A. Yes, sir.
Q. You were not charged at the time you were summoned here as a witness?
A. I don't remember whether I was or not.
Col. CLAYTON. I don't press that on Mr. Harris.
Mr. MARMON. You have never been convicted of larceny or anything of that kind?
A. No, sir; and I don't aim to be.

229 Q. You say you have known these parties a long time; you are all about the same age?
A. Yes, sir; I guess I am older than either one of them; I have known them a good while, though.
Q. Now, in regard to that statement of Byrd as to the time when he was robbed, I think I understood you—I don't know whether Col. Clayton did or not about that matter; you don't know whether it was when he first went down there to the boat, when he was first called, I mean, or when he went back after the men went back again?
A. I don't remember.
Q. You don't remember which time it was?
A. No, sir.
Q. But it was before the shooting and at the time of the shooting?
A. Yes, sir; it was along about that time.
Q. That is what I understood, that the shooting was done at the time the dead man was calling on him for his money.
(No response.)
Col. GRACE. When you were talking there in the conversation which you have been detailing here in your examination, with the Byrds down there, I will ask you if they said anything in regard to a little fellow that was along or they claim was along?
A. Yes, sir.
Q. What did they say, the Byrds, either one of them?
A. I never talked to Joe Byrd at all.
Q. You talked with Martin Byrd.
A. Yes, sir.
Q. Now, I will ask you if he said anything about a little fellow that was along?
A. Yes, sir. He said there was a little fellow along; I asked him if they had him, and he said no; he said I think I shot him through his

shoulder here somewhere; he said I was standing holding him and heard some one hollering up the creek; I didn't know who it was until I heard him holler; he said it was Mr. Boyd; he said he knowed him by his
230 voice, and he said when I let go of him and started up there these other boys let him get away.

Q. I will ask you if he said at any time anything about that little fellow having fired at him once or twice?

A. I don't think he told me he fired ary shot.

Recross-examination:

Col. CLAYTON. Now, Mr. Harris, you don't seem to remember any part of the conversation very distinctly. Might you not be mistaken as to him saying he shot him?

A. He didn't say exactly he shot him; he said "we shot him."

Q. In the shoulder?

A. Yes, sir; about the shoulder; that is what he thought, about the shoulder.

Q. Might he not have said that Joe was holding him.

A. No. He told me that he was holding him himself, and when John hollered he run up there, and when he let go he told him to hold him. He said they didn't do it, they let him get away.

Q. After he shot twice did he say he ran up on the bank to where these other men were fighing not very far off?

A. No; I don't remember that he told me that.

Q. Somehow or other he got hold of the little fellow?

Q. Yes, sir.

Q. That was after Davis and Dansby were shot?

A. I don't know whether it was before or after.

Q, It was after these men were shot, wasn't it?

Col. GRACE. He don't know.

Col. CLAYTON. I reckon he knows what the man told him. (To the witness:) He told you he took hold of this man; was it before or after he was shot?

A. He didn't say.

231 Q. He didn't claim after he got shot that he had hold of him, did he?

A. No, sir; he said, "I had hold of him." He didn't say whether before or after. He said, "When Boyd hollered up the creek, I said to some of them to hold him, and they let him get away."

Q. He went up after Boyd, and then they let this man get away while he was after Boyd?

A. Yes, sir.

Q. You don't claim now that he said he shot him?

Col. GRACE. We object to that.

Col. CLAYTON. I say you don't now claim that Martin Byrd said that he did the shooting?

A. No, sir; I don't claim that.

Q. You see, you did state that at first when you were in Mr. Grace's hands?

A. I said that he said, "We did the shooting."

ROBERT TOPPINS:

Mr. MARMON. Where do you live?

A. I live 4 miles south of Oak Lodge, Skullyville.

Q. How long have you lived up there?

A. About 4 years.

Q. What position, if any, do you hold now?

A. I am a deputy marshal.

Q. Do you know Martin Byrd and Joe Byrd?

A. Yes, sir.

Q. Do you know about the time that Davis and Dansby were killed up there in the Nation?

A. Yes, sir.

Q. Did you see Martin Byrd or Joe Byrd shortly after that shooting?

A. I saw them the next morning.

Q. I will ask you if Martin Byrd told you he killed Davis?

A. I don't know that he did himself.

232 Q. You don't know that he did?

A. No, sir.

Q. Well, what did he say about it when you were there?

Col. CLAYTON. Please confine your conversations now to Martin Byrd; never mind what Joe said, because there has been no foundation laid as to him, if I remember aright?

Mr. MARMON. Go ahead now and tell what he said about the Dansby shooting?

A. There was so ma'y talking I could not be positive who did make the assertion.

Col. CLAYTON. That is not good, then?

Mr. MARMON. What did Martin say about going to the river, going down to the ferry?

A. He said he was called and went down to the ferry.

Q. What else now?

A. And I forget exactly what words he used, but I think he said he suspicioned something, and they wanted him to cross them and he thought something wrong, and he made an excuse that Mr. Dansby had the key.

Q. What did he do then?

A. He went back to get the key.

Q. What did he say he did then?

A. He came on down then; they went down there to cross them and he went to unlock the boat; and I think he said Davis said to him that he need not mind about that, that it was his money he wanted; and straightened up, I believe he said, when Davis spoke; and he noticed his pistol wasn't cocked, and he drew his pistol and shot Davis.

Q. What did he say about that being the first shot fired?

Col. CLAYTON. That is objectionable.

Mr. MARMON. What did he say happened?

A. I don't know that I could make any statement about that; it was a general shooting.

233 Q. The first thing he noticed, he noticed Davis with his pistol in his hand; he straightened up and he drew his pistol and shot him?

A. Yes, sir; after Davis made that remark to him.

Q. He looked around and saw Davis with his pistol in his hand, saw it was not cocked, then he drew his and shot Davis; then there was a general shooting?

A. I don't recollect that he said a general shooting followed, but don't remember just how that was.

Q. You do know that he said he went down there first without anybody?

A. Yes, sir; that is what he said.

Q. Then he went back to the house?

A. Yes, sir.

Q. Did he say anything about sending off for anybody—sending around for men to come in?

A. Not to me.

Q. Did he make any other statement to you about the matter, that you remember?

A. I don't recollect now. There was something said about Boyd running off and he found him, but as to the details I don't remember. He said he just followed him by the noise he made in the brush, I think he said.

Q. Didn't tell you that he followed him by the light of his pistol when he was shooting?

A. No, sir; he didn't say that.

Cross-examination:

Col. CLAYTON. Didn't he tell you that Boyd hollered?

A. He hollered after he had swam the creek.

Q. He did swim the creek?

A. Well, I suppose so; I only go from what I heard.

Q. What I mean by that is, he told you that?

A. Yes, sir.

Q. When I say he did certain things I mean that he told you that.

A. Yes, sir.

Q. He told you he had swam the creek and hollered over there?

A. Yes, sir.

234 Q. Dansby was staying at his house, didn't he say, or do you know how that was?

A. He didn't say anything about that.

Q. He told you this: When he went out he suspicioned something wrong; he told them Dansby had the key, and went back to Dansby to get the key; didn't he tell you that he went back to his house?

A. No, sir; he didn't say where.

Q. That Dansby had the key to what?

A. To the ferry.

Q. Dansby was to run the ferry the next day, wasn't he?

A. I don't know.

Q. Didn't he state that to you?

A. No, sir.

Q. He did say to you that Dansby had the key?

A. Yes, sir.

Q. And that he went back after it?

A. Yes, sir.

Q. Did he say how far he had gotten before he went back to get the key?

A. No.

Q. Did he say whether he had just went out on the porch or had gone clear down?

A. No, sir.

Q. Let me ask you this: Did he not say that he heard somebody holler on the outside; that it was late at night—10 or 11 o'clock?

A. Yes, sir; I think that is the way I have stated it.

Q. That he heard somebody hollering upon the outside?

A. Yes, sir.

Q. That he then went out?

A. Yes, sir.

Mr. MARMON. We object to his putting words in his mouth.

Col. CLAYTON. Mr. Toppin won't allow a man to put words in his mouth. I am trying to refresh his memory. Now, when he told you he went out I believe you say he didn't tell you whether he went farther from the porch or not?

A. I didn't understand whether these men came to the house after him, but he went out after he heard them call.

235 Q. And he suspicioned something was wrong and went back to Dansby to get the key, and then they all went down?

A. Yes, sir.

Q. Four of them, didn't he say?

A. Well, he didn't say how many went; I don't know.

Q. That they went down to the boat?

A. Yes, sir.

Q. And while he was unlocking the chain he told you that Davis drew his pistol on him and demanded his money?

Q. Yes, sir.

Q. Did he use this language, to "give up his rusty change"?

A. I will repeat the words as near as I can. He says, "Never mind that." He says, "We don't want to cross the river." He says, "It is your damned old rusty change we want." That is the words Martin used to me.

Q. He said he looked up and Davis had his pistol in his hand, but wasn't cocked?

A. Yes, sir.

Q. Did he say anything about falling to his knees?

A. Yes, sir.

Q. What did he fall to his knees for if the pistol wasn't cocked?

A. I don't know; he just dropped himself down; I won't say that he used the word "knees."

Q. I will ask you if he didn't tell you that Davis fired over his head?

A. I heard him make that statement, but I don't know whether it was there or not that morning; there was a good deal of excitement there.

Q. You are not certain whether he told you that that morning?

A. I will not say but what he said that, that Davis shot over his head and he dropped down.

Q. Did he say anything about the shot going into the water; going over his head and going into the water?

A. No, sir.

236 Q. But he did say it went over his head?

A. Yes, sir.

Q. I will ask you if he didn't tell you that Boyd shot Dansby, and shot him in the back?

A. No, sir; I don't think he did.

Q. Let me ask you this question, and maybe I can refresh your memory: Do you remember of his telling you that they went up there to the ferryboat where Boyd had ran up and swam the creek and got him?

A. Yes, sir.

Q. Told you he got a pistol, too, from there?

A. Yes, sir.

Q. I will ask you if he didn't tell you that when he got Boyd that there was something said about Boyd shooting Dansby at that time by Boyd himself, about breaking his back or shooting him in the back?

A. Not to me.

Q. He told you that he shot Davis, didn't he?

A. Yes, sir.

Q. Shot him in the head?

A. Yes, sir.

Q. Did he tell you he shot him the second time, or do you remember; how about that?

A. I think he did.

Q. I will ask you if he didn't tell you that after Davis fired, the ball went over his head, that he raised and shot him in the head, and about the time he shot him he shot him again and then ran off to where the others were?

A. I don't think he said he run off; I don't know whether he said he done anything at all after that.

Q. I don't mean he ran off, but ran a short distance, a few steps. You remember him saying he shot Davis twice?

A. Yes, sir.

Q. Did you examine Davis?

A. Yes, sir.

Q. Did he have two shots in him?

A. No, sir.

Q. Where was the shot?

A. Right here in the forehead.

Q. How was the other eye?

A. It was there.

237 Q. Perfect?

A. Yes, sir.

Q. Bursted out?

A. No sir. When he was brought here it was said there was a reward of $200 for him, that he had got out of the penitentiary at Little Rock, and I had a descriptive list of Davis that was sent here from Little Rock, and I went over and made a careful examination of the man in order that Byrd would get the reward; he wanted the reward, and we opened his eyes to see.

Q. You saw it wasn't bursted out?

A. No, sir.

Q. Wasn't one of the eyes closed and the other one open?
A. No, sir; neither one of them.
Q. We have got all mixed up on that eye.
A. And one eye, this one was nearly closed, but it was there; I suppose probably——
Q. If Byrd shot the second time towards the head he didn't hit him in the eye?
A. No, sir.
Q. He is mistaken as to that?
A. Yes, sir. He was shot right through the head here, and the ball went through the head and came out back here, angling across the head.
Q. Did you see Dansby?
A. Yes, sir.
Q. How was he shot?
A. I didn't see the wound; I knew from what he said, though, he was shot in the back. The ball lodged in front here.
Q. Could you feel the ball?
A. I didn't feel for it, he seemed to be suffering with it a great deal and I couldn't do him any good, and consequently didn't examine him.
Q. Did he suffer much?
A. Yes, sir; seemed to.
Q. Did he tell you who shot him?
A. The words he used were these: "When I stepped to the door, he spoke to me, he knew me."
Q. You knew the old man?
238 A. Yes, sir. I stepped up and said, "John, I am sorry to see you in this fix."
Col. GRACE. Hold on.
Col. CLAYTON. Was that before or after the doctor came?
A. The doctor had been there; I was the last man there.
Mr. MARMON. I believe I will object, if your honor please, to the statement of the witness as to what he said there.
Col. CLAYTON (to witness). Do you know whether he thought he was going to die or not?
A. From the remark he used, I would suppose he did. He just made this remark: "They got me and we got one of them."
Q. Did you hear him say anything about the man on the outside?
A. No, sir.
Q. He did not say who shot him himself?
A. No, sir.
Q. You didn't go there until morning?
A. No, sir.
Q. Was Dr. Foyle there?
A. Yes, sir.
Q. Did you see Boyd?
A. Yes, sir.
Q. What was his condition then; had he revived?
A. Very little.
Q. What was his condition?
A. He was shot all over.
Q. Peppered with what kind of shot?

A. They were what I would call bird shot.

Q. What was his mental condition; did he seem to think he was going to die, or what did he think?

A. I don't think he did when I got there; he didn't say, though.

Q. Did you ever see this watch (handing witness watch which has been offered in evidence)?

A. I had a watch just similar to that which was captured.

Q. Where did you get it?

A. I got it from Dr. Foyle.

239 Q. What did you do with it?

A. Brought it to Fort Smith with the other things.

Q. Did you see Dr. Foyle when he got it?

A. No, sir. And a man named Rigsby across the river here identified it as his watch.

Q. That watch you got from Dr. Foyle?

A. Yes, sir.

Q. Where were you when you got it?

A. In Skullyville.

Q. You got the watch from Dr. Foyle?

A. Yes, sir.

Q. That watch [pointing]?

A. Yes, sir; well, I take that to be the one.

Q. The one that Rigsby got, you got from Dr. Foyle?

A. Yes, sir.

Q. There are some things lying down there on the floor I wish you would examine. Did you get a pistol?

A. Yes, sir.

Q. What did you do with it?

A. I believe it is here somewhere; I think I left it in your office.

Q. I don't know whether you brought this clothing here or not.

A. I think the coat and vest are similar to the ones Davis had on.

Q. Examine those other things lying there.

A. They are all such things as I received.

Q. You received them at Byrd's house?

A. Yes, sir.

Q. Were they in a sack or not?

A. I don't remember; it rather seems to me they were all in one shirt.

Q. Just look at that and see if that is not the shirt?

A. Yes, sir; this is the shirt. And I think that coat and vest were on Davis; some of them called him Myers.

Q. Did you see anything of a gun?

Col. BYERS. You are making him your own witness, are you?

240 Col. CLAYTON. Yes, sir. (To the witness.) Please state if you saw anything of a gun?

A. Yes, sir; a double-barrelled shotgun.

Q. What kind was it?

A. A breech-loading.

Q. State about that.

A. That was the gun that was said to have been captured there.

Q. Where did you get it?

A. From Dr. Foyle.

Q. Where?

A. At the creek.
Q. At Byrd's house?
A. Yes, sir.
Q. Right there at the ferry?
A. Yes, sir; the ferry is right at the house you might say, probably 100 yards and probably 150.
Q. What did you do with the gun?
A. Left it with Dr. Foyle.
Q. Did you ever see it afterwards?
A. No, sir.
Q. Did you bring Boyd down here?
A. Yes, sir.
Q. And the dead man?
A. Yes, sir.
Q. Where was he taken and buried?
A. On the Arkansas River.
Q. You took him across the Poteau here and buried him?
A. Yes, sir.
Q. How long have you known the Byrds?
A. I think I have known Martin Byrd about 3 years as well as I remember; Joe Byrd is a stranger to me; he has not been in the country but a short time; that is, not to my knowledge; I never heard of him.
Q. Did you have any talk with Boyd that night?
A. No, sir.
Q. Did you have any talk coming down about this matter?
A. No, sir; unless it was just a remark.
Q. He didn't talk to you about the shooting?
A. No, sir; he was in the wagon and I was riding a horse. I did ride a little piece with him, but there was nothing said about that;
241 it was on another matter.
Q. You knew him before, didn't you?
A. Yes, sir; I have known him since he was a boy.
Q. Did you know Standly?
A. If I ever saw Standly before I don't know it, until I saw him in the court-house.
Q. Did you know Davis?
A. I saw him once before that, when he rode right opposite my house.
Q. Anybody with him?
A. Yes, sir; there was a man's son with him named Smith. I recognized him as the same man that was killed up here, that is, Davis.
Q. Did you ever see him to talk to him in his lifetime.
A. Yes, sir; a very few words.
Q. Did he tell you his name?
A. He told me then his name was Sampson, and claimed to be Mr. Smith's brother-in-law.
Q. That was the man that was known up there as Davis and Myers?
A. Yes, sir.
Q. Was he armed at the time you saw him?
A. I don't think he was; if he was I didn't notice it. I didn't pay much attention to him when I talked to him. After he told me he was Smith's brother-in-law I supposed he was all right.
Q. What Smith is that?

A. He is this man Smith—I think he appeared in a case against Mr. Daly not long ago.

Q. When was that you saw him when he told you his name was Sampson?

A. Well, I could not tell you within a month; it was along in the spring, a short time before this thing happened.

Q. He was claiming his name was Sampson to you?

A. Yes, sir.

Q. That is the man you afterwards recognized as being Davis up there?

242 A. Yes, sir; he claimed his name was Davis; I don't know what his name is; I have heard him called Davis Myers, and Sampson. I think Davis is his right name.

Redirect examination:

Mr. MARMON. I understood you at first to say that Byrd told you that when he noticed that the pistol Davis had in his hand wasn't cocked that he then jerked out his pistol and fired at him before Davis shot—fired at Davis. Was I correct about that?

A. Yes. I think that is the way he said it; I don't know whether he said Davis shot at him or not.

Q. You don't remember that he said Davis shot at him?

A. Well, I believe he did say that he shot over his head.

Q. You did say at first that he said that he shot at Davis first, raised up and shot back that way [indicating].

A. He said he throwed up his pistol this way and shot him.

Q. He dropped to his knees——

A. He fell before he shot him.

Col. CLAYTON. Fell on his knees?

The WITNESS. Yes, sir.

Mr. MARMON. That was before Davis shot, though.

A. I am not positive about that, but I suppose that he meant to leave that impression, that he fell to save himself.

Q. He dropped down there that way, and he noticed the pistol wasn't cocked, and as he dropped he jerked his pistol out and fired.

A. Yes, sir.

Recross-examination:

243 Col. CLAYTON. He claimed to have shot Davis when he fired, did he not?

A. Yes, sir.

Q. And if Davis shot, he shot before he did?

A. Yes, sir; he undoubtedly did; they both might have shot at the same time. Davis never shot after he was hit; I am positive about that.

Q. Then if Davis shot at Byrd, and this shot went over Byrd's head, then Davis must have shot before Byrd shot.

A. They either shot at the same time or Davis shot first.

Redirect examination:

Col. MARMON. Did he say anything about Dansby killing Davis?

A. No, sir; there was some such talk there, but I don't remember who told that; that was talked there that morning.

Q. Did Byrd say how many times he shot?
A. He said he shot twice at Davis.
Q. There wasn't but one wound on Davis.
A. That is all.
Q. Then he didn't say whether he missed him the first time or not?
A. He said he shot him once through the head here, and the next time in the eye. I don't remember which time he said he shot him in the eye.
Q. He said that he was called and that he went out?
A. Yes, sir.
Q. Did he say that he gave any excuse to them to go back and get the key that he suspicioned something?
A. Yes, sir.
Q. Then he said he talked to them before he went back and got the key; made the excuse that Dansby had the key?
A. Yes, sir.
Q. Did he not say further that he had the key in his pocket?
244 A. I am not certain about that; I don't think he said anything about that.
Q. But that he did make an excuse that Dansby had the key, and he had to go back and get it?
A. Yes, sir.
Q. You don't know whether they came to his house or not. Did he say anything to you about sending off to get men to come down there, and a gun?
A. No, sir; he didn't say anything to me about that; most of the talking was done before I got there. I was tolerable busy.

Recross-examination:

Col. CLAYTON. Now, in regard to that shooting, there was two shots fired—did he not tell you that the man dropped at his first shot?
A. That is my understanding—well, of course, he dropped; he was bound to. He said he hit him twice; he was undoubtedly mistaken about that.
Q. If he told you that he struck him here in the forehead once, and in the eye the second shot, of course that would mean that he dropped at the first shot.
A. Yes, sir; the shot that hit him in the head here went through the hatband.
Q. This was in the morning you were talking to him?
A. Yes, sir. When he was hit there he never done anything after that. He never spoke or moved.
Q. You mean by that he could not?
A. Yes, sir; he could have done just as much without any head at all as he could after he was shot.

245 Redirect examination:

Col. GRACE. You said something about a reward being offered; how long had you heard that reward had been offered?
A. I never heard it at all until I got here.
Q. You heard it after you brought the man in?
A. Yes, sir; heard it here.

Q. Byrd was asking you about it, was he? I understood you to say you wanted Byrd to get it.

A. Yes, sir; that was the object in making the examination. Capt. Williams give the descriptive list to me; I think it was sent from Little Rock, and I went over and examined him.

Col. CLAYTON. Which Williams?

The WITNESS. Mr. Sam Williams, the chief deputy in the marshal's office.

JAMES MACGHEE:

Col. MARMON. Where do you live?

A. I live up on Cache.

Q. How far do you live from Martin Byrd?

A. Oh, mighty near 2 miles from him, northwest of him. He lives on the creek.

Q. He runs that ferry?

A. Yes, sir.

Q. Do you remember the time that Dansby and George Myers were killed up there?

A. Yes, sir; I come there after the shooting was done. I wasn't there at the present.

Q. You were not at the killing?

A. No, sir.

246 Q. Did you get any message from Martin Byrd that night?

A. No, sir; he never had nothing to say to me.

Q. Did you get any word from him? Did he send anybody to you?

A. Never saunt no one. I don't know whether he saunt Richard; he was the only one that came there.

Q. Who was that?

A. Richard Butler.

Q. What time did Richard Butler come to your house?

A. Half after 9 o'clock.

Q. What night was that on?

A. On Sunday night.

Q. Was that the same night of the killing?

A. Yes, sir.

Q. What did he come for?

Col. CLAYTON. I object to that. Richard Butler is here, and has not been put upon the stand.

The COURT. I do not think that evidence would be competent.

Mr. MARMON. I asked Martin Byrd this question, whether or not he sent over for a gun, and whether or not Richard Butler left his house at all that night, and then I asked him the question, if he didd't send to James MacGhee's after a gun, and send Richard Butler. He said, "No." As a matter of contradiction I think it would be competent.

The COURT. If you could get at it in a proper way it would be. You can not prove what Butler said.

Mr. MARMON. I want to prove what he went there for, and what he got.

The COURT. You might ask him what he got, whether he went there, and what he got.

Mr. MARMON (to witness). Richard Butler did come to your

247 house about half past nine o'clock?

A. Yes, sir.
Q. What did he get?
A. He got my gun; he come and borrowed my gun; but he didn't tell me Martin sent him, though.
Q. He come and borrowed your gun?
A. Yes, sir. He said there was some men down to the creek——
The COURT. You needn't state what he said.
Mr. MARMON (to witness). He come and borrowed your gun?
A. Yes, sir.
Q. Do you know where he went after that?
A. He said there was some men down there to the creek, and he thought it was them robbers.
Q. You can't state that?
A. That was what he wanted the gun for; I have to tell that; that is what you have got me here for.
Q. He said there was some men down to the creek. Now, what did he say they was going to do with them?
Col. CLAYTON. Never mind that.
Mr. MARMON. What part of the creek were they on?
A. They were at rock ford; it is right where they keep the ferry, but we calls it rock ford.
Q. He got your gun, did he?
A. Yes, sir.
Q. Was it loaded?
A. Yes, sir.
Q. What kind of a gun was that?
A. Winchester rifle.
Q. Pretty good gun, wasn't it?
A. Yes, sir.
Q. Well loaded when it left there, too?
A. Yes, sir.
Q. When did you get it back?
A. I got it that night after the shooting, when I went down there.
Q. Where did you get it at?
A. I got it there at the house.
248 Q. Whose house?
A. Martin Byrd's house.
Q. Richard Butler came to your house and got the Winchester, and the next time you saw it, just after the shooting, was down there at the rock ford; you got it at Martin Byrd's house?
A. Yes, sir.
Q. Did you see any other guns there?
A. Yes, sir.
Q. What kind of guns did they have?
A. Winchesters.
Q. Did they have any pistols?
A. Martin had one.
Q. This was about half-past 9 o'clock at night.
A. Yes, sir; when he came to my house.
Col. GRACE. If the court please, our theory was, in opening this case, that they knew these men were coming there and were there, and they col-

lected a force there for the purpose of taking them. Richard Butler was at the ferry. He went on the boat and fired at Boyd. If we could show that Richard Butler was in search of arms, and what he said he wanted them for, it does seem to me that what he said would be admissible. Of course, not as hearsay against Byrd or anybody, but against himself and all the parties there—part of a criminal design; it is a declaration made in pursuance of a conspiracy.

The COURT. I don't think it would be competent.

Col. GRACE. Save our exception.

Mr. MARMON (to witness). I didn't get the distance from your house to the rock ford.

A. I said it was a mile and a half from my house to Martin's; I live above Martin's; he lives on the creek there.

Cross-examination:

Col. CLAYTON. How far do you think it is?

A. A mile and a half, I think.

Q. You said at first 2 miles.

A. May be I am mistaken.

249 Q. Did you hear the shooting?

A. Yes, sir.

Q. A good deal of shooting, wasn't there?

A. There was right smart for a little while.

Q. Did you hear anybody halloo?

A. I never heard no one.

Q. You went down there, you say, after the shooting?

A. Yes, sir.

Q. Had they got Dansby at the house when you got there?

A. Yes, sir; he was in the house.

Q. Had they got Boyd up to the house yet?

A. No, sir; he was down at the creek.

Q. Did you go down to the creek?

A. No, sir.

Q. Did anybody go with you?

A. Yes, sir; all these boys went down, but they were ahead of me.

Q. What boys?

A. Simon Dansby and Jeff. Campbell.

Q. They were not down there at the shooting?

A. No, sir.

Q. You know that?

A. Yes, sir; I know they were not at the shooting, because and Simon and Jeff. was all at home.

Q. You had not gone to bed, had you?

A. Yes, sir; I had laid down.

Q. Had you gone to bed before Butler came to you?

A. Yes, sir.

Q. He didn't get a shotgun from you?

A. No, sir.

Q. Butler shot that shotgun, didn't he?

A. The shotgun was something they had got some place else. I don't know anything about that.

Q. He didn't shoot your rifle?

A. He carried it away from home.
Q. You don't know what became of it?
A. No, sir; it was at the house; I don't know who shot it.
Q. Was there any shots fired out of it?
250 A. There wasn't but 3 in it when I got it.
Q. Were there any hulls around there?
A. I never went down there to look.
Q. When you went down there did you see Dansby?
A. Yes, sir.
Q. Did Dansby tell you who shot him?
A. Yes, sir.
Q. Who did he say shot him?
A. He said John Boyd shot him.

Mr. MARMON. If the court please, we object to this witness stating what Dansby said about who shot him.

Col. CLAYTON. I have laid the foundation to make it competent. (To the witness.) Was it before or after the doctor was there that he told you that?

A. I got there before the doctor did a good while.
Q. Did he tell you before the doctor came there?
A. Yes, sir.
Q. What did he say about whether he was going to live or die?
A. He said he would never get over it. He told me that Boyd shot him, and he would never get over it.
Q. Did he seem to suffer much?
A. Yes, sir; suffering right smartly.
Q. It was in the same talk that he told you he would never get over it that he told you that John Boyd shot him.
A. Yes, sir.
Q. Was he praying any?
A. I never heard him.
Q. But he told you he would never get over it?
A. Yes, sir.
Q. How long did he live?
A. I don't just remember, but I think he didn't live many days.

Mr. MARMON. Note our exceptions to this.

Col. CLAYTON. Where was Boyd at the time Dansby told you he shot him?

A. He was down on the creek then. Martin had gone on after him, and the parties were all down at the creek.
251 Q. They came up after a while with Boyd?
A. Yes, sir.
Q. It was before the boys came up that Dansby told you he would never get over it, and that Boyd shot him?
A. Yes, sir; he told me that Mr. Boyd shot him.

Redirect examination:

Mr. MARMON: You say that Simon and Jeff went with you; how far did they live from you?

A. They live right on my place.
Q. Did they see Richard Butler up there?

A. No, sir; they was in Jeff's house.

Q. When you heard the shooting you knew pretty well what was being done, didn't you?

A. I thought, may be, they had run on to them.

Q. Did you tell Jeff and Simon about it?

A. No, sir; I never had nothing to say. They came to me and said, let us go; I told them I didn't want to go, but I went with them anyhow.

Mr. HARMON: We want to introduce the testimony of Martin Byrd and Joe Byrd before the commissioner, as a matter of contradiction.

Mr. MARMON (reading):

"UNITED STATES OF AMERICA,
Western district of Arkansas.

Before James Brizzolara, United States commissioner.

UNITED STATES,
versus
JOHN BOYD.

See complaint and endorsement thereon filed herewith.

On the 8th day of April 1890, came the United States of America, the plaintiff in this cause, by
252 esq., U. S. attorney, and the defendant in his own proper person, in custody of the marshal, and by his attorney when the following testimony was heard and proceedings had, to wit:

MARTIN BYRD being duly sworn, deposes and says: I reside at Cache, C. N., and know the defendant in this cause; know John Dansby was present at time of shooting. Deft. Jim Davis or Geo. Myers & Eckles came to Cache Ferry and wanted to cross; this was about eleven o'clock in night on last Sunday night. I told them I did not like to ferry anyone across river at night. They said they only had one gun; so Davis said. Echols walked up and took gun from Davis & goes & lays it on far end of boat; he came back. Davis said to me, lay that chain down. I laid it down, and I looked up at him & he had his pistol on me. About this time deft. shot John Dansby, who was just off a piece from the boat. Deft. was right at Dansby. After deft. shot Davis, cocked his pistol on me; just as he got his pistol cocked I fell to my knees and shot and hit him in the forehead; as I fell to my knees Davis shot, ball went over me, and then it was that I shot. I shot at Davis twice, and hit him twice; hit him in the forehead and in the eye. Richard Butler was on boat across with oar. When deft. shot Dansby Richard Butler picked up gun that had been left at end of boat by Echols and shot deft. Deft. commenced hallooing, and he ran up the river and swam across creek. My brother had hold of Echols, and deft. was hallooing so that he let him loose and went down to where deft. was, and we took him and put him on boat and got him to house. When deft. shot Dansby, Dansby and
253 deft. were in front of ferry on bank of river, and about 3 or 4 feet apart. The first shot fired was by deft. Dansby fell when deft. fired. He was shot in back. When deft. shot Dansby Butler shot him

15 ith gun. Deft. was the first man that started shooting and the last man to stop. Deft. shot Dansby and then commenced firing at crowd on the landing. Deft. fired first and Butler next. I shot Davis twice; only shot twice. Butler shot twice at deft. My brother shot Echols. Davis, when he had his pistol on me, said that he wanted my money. I told him I had no money. Davis said it didn't make a bit of difference; about this time deft. fired. They came up to ferry Sunday night about eleven o'clock and called me to come down to boat. I was in my house, about 25 or 30 y'ds from ferry. I went down to ferry with my brother, Joe Byrd, and Richard Butler and Simon Dansby and William Emery. When we got to boat met these men; they were apart. Echols went and laid gun on boat and came back. I then went and untied chain at edge of boat, and Butler got on boat, picked up a pole, and went about middle ways of it. Dansby stopped on bank. My brother was up there with Dansby; so was Emery; the five of us and the three men were all that were there. Echols walked off boat and went to his crowd. Butler, when he picked up gun, ran off boat, and when he got on bank he shot. All the shooting occurred on bank. Deft. had two pistols; one buckled around him and one concealed under his vest; could not tell where Davis had his. Davis had gun; it was a breech-loading shotgun. Davis said, We want to cross. I told him I did not like to cross at night. When I stooped down to get hold of chain Davis had his pistol on me, and said, Let that chain
254 alone, and asked me to give him my money. I told him I had no money. About this time Boyd shot and Davis he shot, but did not hit me. I shot after Davis shot; then Butler shot Boyd. I had a pistol; my brother had my Winchester. Dansby had his Winchester and Butler had no arms. Echols got away. Dansby is killed. When I caught deft. his pistol was empty; it was freshly fired off all around. Had seen deft. before. Deft. is a white man. Me and my brother are citizens; three others of my crowd are non-citizens. After I killed Davis I went and caught Echols, and let go of him and went after deft. Deft. said he got Echols' pistol and threw it in the creek.

JOE BYRD, duly sworn, says: I reside in Choctaw Nation. They called us to ferry and said they wanted to cross. Davis said this, and as we went to unchain boat def't shot Dansby, and as soon as this occurred Davis said, Hold on we do not want to cross; money is what we are after. Then we all went to shooting. Dansby was coming along to boat and had turned his back on def't, coming into boat, when def't shot him. Dansby was starting on boat when def't shot him. When Dansby was going into boat def't pulled out his pistol. Def't emptied his pistol at all of us. I had a Winchester.

It appearing from the foregoing evidence to the satisfaction of the commissioner that the offense with which the said John Boyd is charged
255 has been committed, and that there is probable cause to believe him guilty thereof, it is ordered that he stand committed.

JAMES BRIZZOLARA,
U. S. Commissioner.

I, James Brizzolara, United States commissioner for the western district of Arkansas, do hereby certify that the foregoing is a true transcript

of the evidence taken before me, and the proceedings had in the above-entitled cause, and that the costs in said case are as follows:

Commissioner's fees..... .....$
Witnesses' fees ....$
Attendance of U. S. attorney..... .....$

JAMES BRIZZOLARA,
U. S. Commissioner.

(Followed by Carbary's "H.")

256 OCT. 27, 1890—8.30 a. m.

(Carbary's "H.")

Dr. W. R. FOYLE recalled.

Col. GRACE. I believe you were a witness for the Government and was on the stand on Saturday.

A. I understood it so.

Q. I believe Martin Byrd came after you.

A. Yes, sir.

Q. You went back to the house, to the ferry; to Martin Byrd's house?

A. Yes, sir.

Q. Now, I will ask you if, before that occurred, you had heard of a reward being offered by John Taylor for certain parties that robbed him?

A. John Taylor told me himself——

Col. CLAYTON. One moment. It is not competent unless you—well, go ahead; I will withdraw the objection.

Col. GRACE. State what you know in regard to the reward business.

A. Judge Taylor told me on Friday morning.

Q. That was before the shooting. How long was it before the shooting?

A. I can't tell you.

Q. Were you present and aiding Taylor in getting up the advertisement for the "elevator" offering the reward?

A. Yes, sir; I was present and know when he got it up.

Q. How much was the reward?

A. $100 apiece for the men.

Q. Do you remember about what time it was this reward was offered?

A. Some time in March, but I can't tell what day.

Q. This time you were at Byrd's house was the 6th of April?

A. On the night of the 6th of April.

257 Q. And some time in March before that this reward was offered?

A. Yes, sir.

Q. It was generally known, of course, through the country?

(No answer.)

Cross-examination:

Col. CLAYTON. You say Taylor had offered a reward of $100 for the men who robbed him. How many men did the advertisement say?

Col. GRACE. We object to that. We have not put the advertisement in evidence.

The COURT. In connection with that offer he has a right to get everything in connection with it. You called it out.

Col. CLAYTON. He has asked him if he was present when he wrote this reward and helped him to write it, and I have a right to know all the terms of that reward.

Col. GRACE. Well, we object to it.

Col. CLAYTON (to witness). You have said he offered $100 for the capture of the men?

A. And conviction.

Q. How many men?

A. Two men.

Q. Did the reward describe the men?

A. It described one of them.

Q. Did it give his name?

A. No, sir; I don't think it did.

Q. Do you remember what the description was?

A. No, sir; I couldn't give the description precisely.

Q. The reward described one man, and offered $100 each for the two men who had robbed him?

A. Yes, sir.

Q. Did he make any other offers besides the $100 for the men?

A. He offered $25 for the recovery of his watch.

258 Q. How far does he live from where this killing occurred, Martin Byrd's?

A. 7 or 8 miles.

Q. 7 or 8 miles from Martin Byrd's?

A. Yes, sir.

Q. You stated that this reward was offered in March. Do you know what time in March?

A. I can't tell the date.

Q. How long do you think prior to the killing of Dansby and Davis?

A. I would say from about 2 to 3 weeks.

Q. Did you hear of the robbing of Taylor?

A. Yes, sir.

Q. How long after the robbing of Taylor was it he offered the reward—after you had learned Taylor was robbed until the reward was offered?

A. Was published?

Q. You testified you helped to get it up, and that was two or three weeks before this killing; how long prior to that had you learned of the robbery of Taylor?

A. 4 or 5 days, if I understand your question right. The one I am answering—I understand you are asking me how long after Taylor's robbery before he got up this advertisement offering the reward?

Q. Yes, sir.

A. 4 or 5 days.

Q. You went and got up this reward?

A. Yes, sir; he got it up; I didn't assist him, only he handed it to me to look at.

Q. How long was that prior to the killing?

A. I think two weeks, somewhere about that; 10 days or 2 weeks.

Q. You heard of the robbery of Taylor about 2 weeks and 4 or 5 days prior to this killing?

A. That is what I would think. I am not positive about these dates. I can't remember them.

Redirect:

Col. GRACE. You think the robbery of Taylor, as you understand it, was how long before the shooting at the ferry?

A. 2 or 3 weeks.

259 JAMES MC'GHEE:

Col. CLAYTON. You stated on Saturday that when you went down to the place where the shooting occurred, and that you heard the shooting?

Q. Yes, sir.

Q. You stated also that Jeff Campbell and Simon Dansby went with you. Did anybody else go with you?

A. Yes, sir.

Q. Who else?

A. Simon Dansby and Will Emery and then little Willie Dansby.

Q. Will Emery went with you?

A. Yes, sir.

Cross-examination:

Mr. MARMON. Where did he go from?

A. From my house.

Q. Emery was living there?

A. They were all staying there.

260 EUGENE STANDLY, defendant:

Col. GRACE. How old are you?

A. 20 on the 6th of December.

Q. Are you acquainted with Boyd here?

A. Yes, sir.

Q. Did you know John Dansby?

A. No, sir.

Q. You are charged here, along with Boyd, with murder of John Dansby at a shooting on Casche ferry in the Choctaw Nation. If you know about that shooting, I will get you to begin and state all you know in regard to it.

A. Well, we came in about 300 yards of the ferry that night about half after 8 o'clock and hollered for the ferryman to come down and put us across. He said he didn't have to go there at that time.

Q. Before you got to the ferry did you find any obstruction there?

A. Yes, sir; there was a slough run into the creek below the ferry apiece.

Q. You came to the slough. Well, now, I will ask you if, before you got to the slough you had tried to cross any other place?

A. Yes, sir; Boyd said the Rock Ford, we probably could cross it, and Boyd and Myers pulled off their clothes and tried to wade it, but it was too deep; that was a short distance below the ferry.

Q. Then you did not want to cross on the ferry if you could get across any other way?

A. No, sir; we tried to cross all the way. We went down the Arkansas River until we got to the mouth of this creek; we were looking for a boat or something where we could cross. We thought we could cross Rock Ford on the rocks without getting wet. The creek was up and we couldn't cross it.

Q. Then you came to the slough?

A. Yes, sir.

261 Q. Then you hallooed for the ferryman?

A. Yes, sir.

Q. That was your idea to have him bring the boat down?

A. Yes, sir; to the mouth of the slough and let us get in there.

Q. So you could avoid the slough and also cross?

A. Yes, sir.

Q. Did he come down?

A. While he was gone we found a log and crossed the slough.

Q. When he first came down what did he say?

A. He never did come down where we was.

Q. What did he say about his coming down?

A. I supposed he was out feeding some horses. There was a bell rattling and he said he couldn't hear anything we said for that bell. Myers told him we wanted to get across. Well, the first trouble, he said he didn't want to cross anybody at night, and Myers said he would pay him well for his trouble. He said he would go and get the key and put us across.

Q. Then he went off, did he?

A. Yes, sir.

Q. You had not crossed the slough then?

A. No, sir; it was sometime after he had gone before we crossed the slough; we laid down and went to sleep while he was gone; I went to sleep before we crossed the slough.

Q. How did you get across the slough?

A. We found a log or a pole across the slough we crossed on. We were right at the log, but we didn't see it. We made up a fire, while he was gone, at the bank and saw the log. We couldn't see it at first; it was dark.

Q. How long do you think he was gone?

A. He was gone something over an hour and a half.

Q. In the meantime you crossed the slough and went up nearer to the ferry, I suppose?

A. Yes, sir.

262 Q. What occurred next.

A. We were sitting down with our backs to the house, and Boyd went on the boat and laid his gun down and got a drink of water, and was setting down on the side of the boat when those boys came up. They came up to our backs before we knew they were anywhere near, and throwed their guns down on us and marched us up on the second bench. They said they had the description of some men that robbed Judge Taylor, and they ordered Boyd to lay his shotgun down when they first throwed down on us.

Q. Where was Boyd then?

A. On the boat. The next thing they done was to disarm me; one held his Winchester on me while the other took my pistol.

Q. Do you know which one held the Winchester on you?

A. No, sir; I didn't know any of them. And when they got my pistol they turned around to Myers and told him to give up his. They went and searched him and took his. I don't know whether he drew it to shoot or not, and he handed it to him. As soon as he got it out of his hand they shot me. I don't know whether he drew it or not, they were standing between me and him.

Q. He drew out his pistol?

A. Yes, sir.

Q. You don't know whether to fire or to give it up?

A. No, sir.

Q. Had he handed it to them before the first shot?

A. I guess not. I picked the pistol up afterwards laying down by him. As I turned around when they shot Myers they shot me and I fell.

Q. Was that the first shot?

A. The first shot was fired killed Myers.

Col. CLAYTON. You call him Myers and Davis?

A. He was going by the name of Myers; his right name was Davis.

263 Col. GRACE. You say they made Davis give up his pistol, and he pulled it out, and *when* he handed it to them?

A. I don't know whether he handed it to them or not. When they shot me I think Boyd run and they all run after him.

Q. Anyhow, they had fired at Davis before he started to run?

A. The first shot killed Davis.

Q. Then you fell after they shot you?

A. Yes, sir.

Q. They all started to run, and they ran after him?

A. Yes, sir; and I laid there about 10 minutes after they were gone, and I got up and started off and went about 25 yards and lay down, and I heard them coming back and I got up and went about 75 yards farther and got in a tree top and lay there. Before I started off I got Davis' pistol was laying down by him. I laid in the tree top all that night and all next day.

Q. After you fell do you remember whether or not they shot any more at you?

A. They shot several after I fell; they knocked the dirt up over my face and head.

Q. Davis was close to you then?

A. I guess he was about 10 or 12 feet from me.

Q. You picked up his pistol?

A. Yes, sir.

Q. How many pistols had you at the start.

A. I had one.

Q. That they took from you before you were shot; then you were shot and fell, and you lay there about 10 minutes and Davis' pistol was lying there and you jerked that up and ran?

A. Yes, sir.

Q. You ran about how far?

A. About 25 yards, I guess. I stopped and lay down there.

264 I lay there awhile and I heard these parties coming back, and I got up and went about 75 yards, I suppose. I could hear them talking all that night and next day at the ferry and at the house.

Q. You crawled under a tree top?
A. Yes, sir.
Q. How long did you stay there?
A. All that night and next day until between sundown and dark.
(Followed by Rider's "I.")

265 "I"

Q. Then you left?
A. Yes, sir.
Q. Now, you say you were shot. Where were you shot?
A. I was hit right at the point of the left shoulder blade; the ball struck the shoulder blade.
Q. Which way did the ball range?
A. It lodged under the left shoulder blade.
Q. Didn't come out?
A. No, sir.
Q. That was a shot from a Winchester?
A. I suppose it was a Winchester. I didn't see any pistol; they had Winchesters. I didn't see any pistols except my pistol. They might have shot me with my own pistol; I don't know.
Q. Now, you have heard what has been said here about calling on them to hand up their rusty change and the attempt to rob these parties. I will ask you whether or not anything of that sort occurred?
A. No, sir.
Q. I will ask you if you had any design or any expectation these parties would be robbed or attacked by your party in any way?
A. No, sir; we didn't go there with any intention of robbing them. We didn't want to cross at that ferry; we tried to cross below there.
Q. You didn't want to come in contact with any one?
A. No, sir; we didn't want any one to see us there at the ferry.

Q. I will ask you to say, in that connection, just where you had
266 been, where you were traveling, where you had been, and how it come you wanted to cross there?
A. We had been up in Washington and Crawford counties to see some of John Boyd's relatives; at least, I and Boyd had.
Q. When did you leave Crawford County?
A. We left there on Friday, I believe, before the shooting occurred; we left Washington County on Friday.
Q. You had been to Washington County?
A. Yes, sir; Washington and Crawford, both.
Q. You left Washington on Friday?
A. Yes, sir.
Q. Come down through Crawford?
A. Yes, sir.
Q. If you were at that man Rigsby's store, just state it.
A. Yes, sir; I and Boyd struck Davis on Saturday before this robbery occurred, and he wanted us to go down to Rigsby's with him.
Q. You struck Davis on Saturday?
A. Yes, sir
Q. He wanted you to go with him to Rigsby's?

A. Yes, sir.

Q. You heard what was said here in regard to robbing the store there at Rigsby's; I will ask you if the statement of Mr. Rigsby is substantially true?

A. Yes, sir; it was about correct.

Q. Now, when you left Rigsby's which way did you go?

A. We went west a piece.

Q. That was Saturday afternoon, if I understand it right?

A. Yes, sir; Saturday night.

Q. Where did you go then?

A. We went west a piece and then turned south and went to the Arkansas River; we crossed the Arkansas River Sunday after this occurred.

Q. Where did you cross?

A. Crossed at Whybark's ferry.

Q. That puts you on this side of the Arkansas; the east side?

267 A. Yes, sir.

Q. Where did you go from there?

A. Myers went up to a little store at the ferry and got something to eat. It was near 12 o'clock when we got across the ferry. We went down the river a piece and built a fire and eat something, and staid there until about the middle of the evening.

Q. You say Davis went to the store?

A. Yes, sir.

Col. CLAYTON. Went where and built a fire?

The WITNESS. Down the Arkansas River a piece and built a fire.

Col. GRACE (to witness). Davis went to the store and got some provisions or something?

A. Yes, sir.

Q. You staid there, then, until about the middle of the afternoon?

A. Yes, sir; and we went from there down the river to the mouth of the Cache Creek. Boyd thought there was a boat at the mouth of the creek we could cross in—a skiff.

Q. Would that be down or up the river?

A. Down the river.

Q. You went down to the mouth of Cache?

A. Yes, sir.

Q. That was way below where the shooting occurred?

A. Yes, sir.

Q. You thought there was a boat there—a skiff?

A. Yes, sir.

Q. When you got there it wasn't there?

A. No, sir; there was no skiff there, and we went up the creek; was aiming to *to* go to this rock ford crossing.

Q. You got up there, as you said a while ago, and then you went on up to the slough?

A. Yes, sir.

268 Q. I will ask you, Mr. Stanley, if you fired a single shot up there at that place?

A. No, sir; I never fired a single shot.

Q. You heard what Joe Byrd said about your shooting twice at him. Is that correct?

A. No, sir; not correct.

Q. I believe you said you had no idea of attacking these parties; didn't attempt to rob them; had no intention of doing anything to them?

A. No, sir; didn't know anything about them; didn't know who lived there; that is the first time I was ever in that part of the country before.

Q. The whole party came up before you saw them and presented their guns?

A. Yes, sir.

Q. I will ask you whether or not you were tried in this court this term for robbery?

A. Yes, sir.

Q. What was the verdict against you?

A. Guilty.

Q. Convicted of robbery at this term of court?

A. Yes, sir.

Q. I will ask you if there are some other indictments here against you in this court?

A. Yes, sir; there are two other indictments against me.

Q. I will ask you in regard to these two others, whether you had anything to do with them?

A. No, sir; I hadn't anything to do with them.

Q. You were not present at all?

A. No, sir.

Q. I believe you are an Indian?

A. Yes, sir.

Q. A Choctaw?

A. Yes, sir; $\frac{1}{8}$ Choctaw.

Q. Was you raised in the Choctaw Nation?

A. No, sir; I was raised in Mississippi.

269 Q. How long have you been in the Choctaw Nation?

A. About 5 years; it will be five years in December.

Q. Does your mother live in the Choctaw Nation now?

A. Yes, sir.

Q. Is your father dead?

A. Yes, sir.

Q. How long has he been dead?

A. About 14 years, I guess.

Q. Whereabouts in the Choctaw Nation does your mother live?

A. She lives at Atoka.

Q. You have said you didn't fire a shot there at all?

A. No, sir; I didn't fire any; I never fired a single shot.

Q. You didn't fire on Dansby or on any of his party?

A. No, sir.

Q. If I understand you rightly, the only pistol you had was taken from you right at the beginning of this difficulty, as you have stated?

A. Yes, sir.

Q. Never had the pistol at all?

A. No, sir.

Q. When you ran away you ran by Davis's pistol and picked it up? Now did you shoot it any?

A. No, sir.

Q. You never fired at all in the whole controversy?

A. No, sir; it had 6 loads in it, and they were in it when I was arrested about 2 weeks after that.

Q. The same loads?

A. Yes, sir.

Q. Then Davis, as a matter of fact, hadn't fired?

A. No, sir; he never fired a shot; the pistol had 6 loads in it when I picked it up.

270 Cross-examination:

Col. CLAYTON. You say there are two other indictments against you in this court?

A. Yes, sir.

Q. What for?

A. For robbery.

Q. You have been convicted for one robbery?

A. Yes, sir.

Q. Were you indicted for the robbery over in Crawford County?

A. I do not know whether I am or not.

Q. You escaped that? (No response.) There is two robberies you are indicted for; one robbery you are convicted of; that is three. There is this robbery over here that you own up to?

A. I don't know anything about the robbery over in Crawford County; I never owned up to anything of the kind.

Q. In Crawford County?

A. No, sir.

Q. I thought you owned up to the robbery?

A. I owned up to Rigsby's. That is right on the line.

Q. You thought it was in the nation, did you?

A. Yes, sir.

Q. You didn't know you were going over into the State when you committed that robbery?

A. No, sir.

Q. If you had known that had been in the State you wouldn't have done it, would you?

A. Well, I don't know whether I would or not.

Q. Now, then, the man you are convicted of robbing, his name is Shannon?

A. No, sir; that was not his name.

Q. What was his name.

A. Horne.

Q. You were convicted this term of court?

A. Yes, sir.

Q. Who was with you when you robbed Rigsby?

A. Boyd and Davis.

271 Q. Who was with you when you robbed Horne.

A. I am not guilty of that charge.

Q. You are not guilty of that charge?

A. No, sir; I don't know anything about that; I was convicted on it.

Q. Mr. Horne identified you?

A. Yes, sir.

Q. Swore by the living God you were the man?
A. Yes, sir.
Q. You denied it on the stand?
A. No, sir; I wasn't put on the stand in that case.
Q. You are not guilty of that charge?
A. No, sir.
Q. There is another little robbery I want to ask you about. There was a man named Judge Taylor robbed over here; how about that?
A. I was into that.
Q. You were in the Taylor robbery?
A. Yes, sir.
Q. When you were arrested Taylor's wife's watch was found on you, was it not?
A. Yes, sir.
Q. Who was with you in that?
A. Myers.
Q. Was this man Boyd with you?
A. No, sir.
Q. Was it Myers, or Davis?
A. Davis was his right name.
Q. Davis was with you in that?
A. Yes, sir.
Q. How long before you robbed Rigsby was that robbery?
A. I don't know; it was some time in March.
Q. What time in the night was it you robbed Taylor?
A. It was about 8 or 9 o'clock, I suppose.
Q. You and Davis robbed Taylor about 9 o'clock at night; went to his house, did you not?
A. Yes, sir.
Q. Called him out?
A. No, sir; I went to his house first.
Q. Just exactly as Horne said you did at his house. What
272 time did you get to Taylor's house?
A. A little after sundown; between sundown and dark.
Q. Dwelling house or store?
A. Dwelling house.
Q. Went into his house?
A. Yes, sir. I didn't see him at the house first; I went to his lot, where he was feeding cattle first.
Q. Then went into the house and got supper, didn't you?
A. Yes, sir.
Q. Where was Davis?
A. He was hid out in the woods.
Q. He was to come in the night later, was he?
A. Yes, sir.

Mr. MARMON. It is understood, of course, that the statement of the witness about these matters does not affect Boyd.

The COURT. Not at all; they do not affect him.

Col. CLAYTON. Your honor holds that the statement of the defendant as to the transaction is evidence.

The COURT. Certainly. The statement of the defendant as to the transaction affects Boyd, but not these questions he is answering now, unless it was the robbery he was connected with. This robbery that he said Boyd was connected with over here affects him; that is, affects him as far as that robbery can affect the case; it was only introduced for the purpose of identifying the party.

Col. CLAYTON. As the case now stands, if it is proved they were trying to arrest these men, it affects him in this way, so far as to show if they were trying to arrest them it was a lawful arrest.

The COURT. Yes, provided they sought to execute it lawfully.

273 Col. CLAYTON (to witness). You say Davis was hid out in the woods.

A. Yes, sir.

Q. You had fixed it up that he was to come there after awhile, had you.

A. Yes, sir.

Col. GRACE. If the court please, I think the details of these other robberies are not evidence. The mere fact that they were committed is admissable, but it would be interminable to go into the details of every case. If he has a right to ask him about the details then I have a right to retry him, and bring out the whole details of the case.

(Objection overruled; defendants except.)

Col. CLAYTON (to witness). You had fixed it up with Davis that he was to come after awhile?

A. Davis fixed it up himself.

Q. One man can not fix up a thing unless another man helps him.

A. I agreed to it.

Q. You went to Taylor's and got him to give you supper?

A. Yes, sir.

Q. Did you eat?

A. Yes, sir.

Q. Did you pay him for it.

A. No, sir.

Q. You partook of his hospitality, eat his supper—eat his bread and drank his coffee. Was his family there.

A. Yes, sir.

Q. How many?

A. His wife and two others; I didn't know them.

Q. Children?

A. No, sir; they were grown people.

Q. Did you have your pistol with you?

A. Yes, sir.

Q. What kind of a pistol was it?

A. It was a Colt's .45.

Q. Describe it more minutely.

A. It was like that one, only walnut handle.

Q. Was it loaded?

A. Yes, sir.

274 Q. What did you have it loaded for?

A. I don't know; I always carry it loaded.

Q. You had it loaded when you went into that man's family?

A. Yes, sir.
Q. Had you gone to bed before Davis come?
A. No, sir.
Q. What did you do up to the time of Davis' coming?
A. I helped him feed some hogs; helped the hired man he had there to feed hogs.
Q. What excuse did you make for coming there?
A. I told him I wanted to stay all night.
Q. Did you tell him you wanted to hire to him?
A. No, sir; not when I first went; I told him afterwards.
Q. Did you want to hire to him?
A. No, sir; he made the proposition to me.
Q. Did you want to hire to him, as a matter of fact?
A. No, sir.
Q. Then you lied to him?
A. Yes, sir; I suppose so.
Q. I would think that was a lie. You told him you wanted to hire to him. What proposition did he make to you?
A. I don't remember now what it was.
Q. You accepted it?
A. Yes, sir.
Q. Then, I suppose you made some arrangement for staying all night, did you?
A. Yes, sir.
Q. What were you doing when Davis came? Did you go out and give him a signal?
A. I was out getting a drink of water when he came up.
Q. You just conveniently was out getting a drink of water when Davis came up?
A. Yes, sir.
275 Col. BYERS. We object to him arguing things of that kind with the witness.
The COURT. There is no argument in it. He is just asking the question. Of course, the jury are to pass on the question of its truthfulness or falsity.
Col. CLAYTON. You got up to go out to get a drink of water?
A. Yes, sir.
Q. Did you whistle?
A. No, sir; I did not. Davis came up. This hired man went out about the lot to see about a cow that was down, and Myers was walking along behind him, following him, off some distance from him.
Q. So the fellow could not see him?
A. Yes, sir.
Q. Then he came up to where you were?
A. Yes, sir; he came right in behind this man with the lantern.
Q. When he came up to where you were what did you do?
A. He came to the gait and stopped; he saw me standing on the porch and he came on in as soon as this fellow went in the house.
Q. You did not want to have a force come up in your rear, so you let him get in the house first?
A. Yes, sir.

Q. What did you do that for?
A. I couldn't tell you.
Q. Isn't it the truth that you wanted to have him in the house when you made your attack?
A. Yes, sir.
Q. Then what did you do?
A. We went in the house and told him our business.
Q. You were on business that evening. You boys were on business. You told him your business?
A. Yes, sir.
Q. What business did you tell him?
A. We told him we wanted his money.
276 Q. Did you do anything with your pistols?
A. Yes, sir.
Q. "Here, let me have your money?"
A. Yes, sir; I did when we first went in there.
Q. She was cocked?
A. Yes, sir.
Q. "Give me your money?"
A. Yes, sir.
Q. Both of you?
A. No, sir; I went in first, Davis stood at the door.
Q. You threw your pistol down first?
A. Yes, sir.
Q. You did not have any mask on?
A. No, sir.
Q. Davis staid at the door?
A. Yes, sir.
Q. Just exactly like you did over here at Rigby's?
A. Yes, sir.
Q. I suppose you smiled a pleasant smile?
A. No, sir; I don't know that I smiled.
Q. You said, "Give me your money;" what did he say?
A. He gave up what money he had.
Q. Did you make him throw up his hands?
A. No, sir.
Q. How much money did he give you?
A. I don't know how much it was.
Q. What was these other men doing?
A. Sitting down right close to where he was.
Q. Who had a pistol on them?
A. Davis was standing in the door with a Winchester in his hand.
Q. He come down on them, did he?
A. He had it in his hands.
Q. Was it cocked?
A. No, sir; I don't think it was cocked.
Q. He wasn't asleep, was he?
A. No, sir.
Q. You threw your pistol down on Mr. Taylor. Where did he get his money?
A. In his pocket.

277 Q. How much did he give you; was it $170?
A. No, sir.
Q. Was it as much as $100?
A. I think it was $90; some odd dollars in money.
Q. What did you do with it?
A. Put it in my pocket.
Q. Did you thank him for it?
A. No, sir.
Q. Did you take anything else from him?
A. Yes, sir.
Q. What?
A. Took a Winchester from him.
Q. Where did you find that?
A. Sitting in the corner of the house.
Q. Did you take anything else?
A. Took a watch.
Q. Where did you get that?
A. I found it somewhere in the house; I don't remember now; in the drawer, I believe.
Q. That was his wife's watch?
A. Yes, sir.
Q. What was the poor woman doing while you were doing this?
A. She never said anything much.
Q. She begged a little, didn't she?
A. No, sir.
Q. You got his money, and got his Winchester, and you got his watch; did you get anything else?
A. Got a razor, I believe.
Q. Anything else?
A. Yes, sir; got a small pistol.
Q. What kind of a pistol did you get?
A. A Smith & Wesson, .38.
Q. What became of that pistol?
A. Davis traded it off somewhere, I think.
Q. Did you get anything else?
A. Yes, sir; got some pocket knives there.
Q. How many pocket knives?
A. There was 3 or 4.
Q. Are these the ones here on this table?
A. No, sir.
Q. These came from Rigsby's, did they? (No response.)
278 Q. You got 3 or 4 pocket knives. He didn't have a store, did he?
A. If he did I didn't see it.
Q. Were they new ones or old ones?
A. New ones.
Q. Where did you get them?
A. Out of the drawer in his desk.
Q. You opened his drawer in his desk?
A. Yes, sir.

Q. Who was holding him while you were getting the things out of the drawer?
A. Davis was standing in the door with a Winchester in his hand.
Q. You opened the drawer?
A. Yes, sir.
Q. Is that where you got the razor?
A. Yes, sir.
Q. Did you get the watch there?
A. No, sir.
Q. Did you get anything else?
A. Nothing that I can remember.
Q. Why didn't you?
A. I didn't see anything else to get.
Q. Why did you not make the man take off his clothing? You didn't want to do that in the presence of ladies, I suppose?
A. No, sir.
Q. You couldn't find anything more; then what did you do?
A. We left.
Q. You say that Boyd was not outside or with you on that occasion?
A. No, sir; he wasn't.
Q. These letters here are in your handwriting, are they not? You wrote these letters that I have introduced here?
A. Yes, sir.
Q. You admit that you are the man that robbed Taylor? (No response.)
Q. Did you go up to Muskogee after that, you and Davis?
A. No, sir.
Q. Look at this letter. Is that in Davis' handwriting or yours?
A. It is not my handwriting.
279 Q. Is it Davis'?
A. No, sir.
Q. Do you know in whose handwriting it is?
A. No, sir.
Q. Is it Boyd's?
A. No, sir; I know it is not Boyd's.
Q. How do you know?
A. I know his handwrite.
Q. You had a Winchester, pistol, $90, a watch, 4 or 5 knives, and a razor?
A. Yes, sir.
Q. You put them in your pocket?
A. I didn't put the Winchester in my pocket; I had the other things in my pocket.
Q. Where did you go to that night?
A. We went some distance off.
Q. Where? Did you go in the woods?
A. Yes, sir.
Q. Laid out in the woods? Where did you divide your spoils?
A. We divided them in the woods, next day.
Q. Anybody with you?
A. Davis was with me.
Q. Anybody else?

A. No, sir.
Q. What did you get in the divide?
A. I took part of the money and the watch.
Q. How much money did you take?
A. I don't know, I took part of it.
Q. One-half of it I reckon?
A. Yes, sir.
Q. You divided equally?
A. Yes, sir.
Q. You took half the money and the watch?
A. Yes, sir.
Q. Anything else?
A. Myers took the balance.
Q. The razor, knives, Winchester, and pistol, and half of the money?
A. Yes, sir.
Q. Did the watch have any guard on it or anything of that kind?
A. Yes, sir.
Q. Did it have a chain when it was taken from you?
A. Yes, sir.
280 Q. Did it have a monogram on it?
A. Yes, sir.
Q. What was it?
A. I don't remember now what it was.
Q. From that time on you went around with the watch, swinging the watch-chain over your belly?
A. No, sir; I did not; I put it in my pocket.
Q. Have you ever been convicted before in this court for anything?
A. Yes, sir.
Q. When was that?
A. Two years ago.
Q. What were you convicted of?
A. Larceny.
Q. Larceny of what?
A. Of stealing a saddle.
Q. You were convicted at Greenwood, were you not?
A. Yes, sir.
Q. Of what?
A. Larceny.
Q. Larceny of what?
A. Stealing beef hides.
Q. Is that all?
A. Yes, sir.
Q. When was that?
A. That has been about 4 or 5 years ago.
Q. How old are you?
A. I will be 20 the 6th day of December.
Q. You were but 16 when you first got caught. Was you convicted of anything before that?
A. No, sir.
Q. Then you were 16 when you first got caught?
A. Yes, sir.

Q. One of the indictments against you here is robbing a man named Robert Haws?

A. Yes, sir.

Q. Another indictment here is robbing a man by the name of Richard C. Brinson. Please state if you were not caught by Mr. Mickle with Haws' boots on.

A. No, sir.

Q. You deny the Brinson robbery?

A. Yes, sir.

Col. CLAYTON (to the bailiff). Call Mr. Brinson. (Mr. Brinson was here brought into court and presented to the defendant.) There is
281 the man; I just want you to see him because I tnought may be you might have forgotten.

A. I seen him before; I seen him in jail.

Q. You say you did not rob that man, had nothing to do with it?

A. No, sir.

Q. A day or two before you robbed Rigsby, I will ask you if you fellows didn't try to rob a negro on the railroad?

A. No, sir.

Q. You deny that?

A. We wasn't near any railroad.

Q. It might have been on the public road?

A. No, sir; I didn't rob any negro on any railroad.

Q. Are there any other times you have been convicted I have not thought of?

A. No, sir.

Q. You think you have given them all, do you?

A. I guess so.

Q. You robbed Rigsby on Saturday night?

A. Yes, sir.

Q. When was it you robbed Judge Taylor?

A. I don't remember what night it was.

Q. How long before you robbed Rigsby?

A. I don't know that either; some time, though, in March, about the last week in March.

Q. The last week in March you robbed Taylor, and a while after that, on Saturday night, you robbed Rigsby, and on Sunday night, the 6th of April, this killing occurred?

A. Yes, sir.

Q. Where were you living during all this time, you and these other fellows?

A. I wasn't living in any particular place; I live at Atoka when I am at home.

Q. You lived under your hat?

A. Yes, sir.

Q. Didn't you live under *under* the trees and under the stars of heaven?

A. No, sir; I staid at a house sometime, and sometimes I didn't.

Q. Were you staying at any house from the time you robbed
282 Taylor until you robbed Rigsby?

A. Yes, sir.

Q. Whose house?

A. I staid at several houses.
Q. Whose?
A. I don't remember the names. I staid at John Boyd's relatives sometime.
Q. You staid at Abe Boyd's, didn't you?
A. No, sir.
Q. Which one did you stay with?
A. I don't remember the name; they lived in Crawford County.
Q. After committing this larceny in the Indian country you went up to Washington and Crawford Counties?
A. Yes, sir.
Q. It was to get away from there?
A. Yes, sir.
Q. What was John Boyd going with you for if he did not help to rob Taylor?
A. I went to where John was living.
Q. How come you to get in with John?
A. I was acquainted with him.
Q. Had he been connected with you in any other robbery?
A. No, sir.
Q. How come you to go with him?
A. I was acquainted with him.
Q. After you got with him you went up in Washington County?
A. Yes, sir.
Q. Who did you stay with there?
A. Some of Boyd's relatives.
Q. What was their names?
A. I don't remember their names; one of the Boyds.
Q. What Boyd was it?
A. I think it was Tom Boyd.
Q. What part of Crawford County was that?
A. It was there on Lee's Creek, in Crawford County.
Q. How long did you stay there?
A. 2 days and a night.
Q. Where did you stay all the rest of the time?
A. We went from there up into Washington County and staid a while.
283 Q. Who did you stay with in Washington County?
A. Some of Boyd's relatives.
Q. What were their names?
A. I don't remember their names now.
Q. You must be a good visiting friend not to remember the friends you visit; that won't do.
A. I don't remember their names.
Q. Do you know Wilson Harris?
A. No, sir.
Q. A man named Harris, you robbed.
A. No, sir.
Q. You deny that?
A. Yes, sir.
Q. A negro?

A. I don't know him.
Q. You deny robbing that negro?
A. Yes, sir.
Q. You say that this robbery over here occurred on Saturday night. I will ask you if it didn't occur on Friday night?
A. No, sir; it did not.
Q. At Rigsby's?
A. It was on Saturday night.
Q. You have heard Mr. Rigsby testify it was on Friday night?
A. I understood him to say it was on Saturday night.
Q. Now, how far did you go that night after the robbery of Rigsby?
A. I don't know how far it was.
Q. Where did you go?
A. We went to the Arkansas River the next day.
Q. I want to find out where you staid that night.
A. It was in the woods; I don't know what place; I could not tell you.
Q. When did you divide your spoils?
A. That night.
Q. What did you get of Rigsby's matters?
A. I got part of the money was all I took.
Q. How much money did you take from Rigsby?
A. $30; some odd dollars.
284 Q. You took the money?
A. I took part of it.
Q. Who took the boots and shoes?
A. Myers and Boyd.
Q. Who had the knives?
A. I had two of the knives, I believe.
Q. What knives had Boyd?
A. I don't remember.
Q. He had some, didn't he?
A. Yes, sir.
Q. Who had the musk?
A. Myers had some of it and Boyd some.
Q. Myers had some of the clothing?
A. Yes, sir.
Q. The clothing that was taken off the back of Rigsby; Myers had that, didn't he?
A. Yes, sir.
Q. You had the money?
A. I had part of it; I had a third of it.
Q. Why did you not take some of the other things?
A. I didn't want to.
Q. You were well enough dressed, were you?
A. Yes, sir.
Q. You had gotten something else from somebody else that satisfied you on the score of clothing? Is that right?
A. I had enough on me; that satisfied me.
Q. Have you, for the last 4 years, ever struck one honest lick? Have you ever worked any?

A. Yes, sir.
Q. Where and when?
A. I worked at several places.
Q. Please name one place you ever struck one honest lick.
A. At Atoka.
Q. Who did you work for?
A. For a man named Weeks.
Q. How long?
A. About 5 months.
Q. Where?
A. On a farm.
Q. When was that?
A. About 3 years ago.
Q. Since then have you struck a lick?
A. I have picked cotton in several places.
285 Q. For whom?
A. I picked cotton in the Choctaw Nation, close to Boggy Depot.
Q. For whom?
A. I forget the man's name.
Q. That is all you have been doing in the way of honest toil—supporting yourself honestly, I mean?
A. I worked last summer.
Q. Where?
A. In Johnson County, Arkansas.
Q. Who did you work with there?
A. A man named Matthews.
Q. Did you do any robbing or stealing down there?
A. No, sir.
Q. How long did you stay in Johnson County?
A. I staid there about 3 or 4 weeks; staid about 6 weeks, I guess.
Q. Why did you not stay longer?
A. I was arrested.
Q. For what?
A. On this trial.
Q. Where were you when Mr. Mickle arrested you?
A. I was 6 or 8 miles beyond Red Oak.
Q. How did you get away from him?
A. He brought me here to Fort Smith, and he had me at a hotel; and the guards all went to sleep, and I got up and went off.
Q. You just turned tail and went?
A. Yes, sir.
Q. That was right. Now, on this night this shooting happened you come to this slough?
A. Yes, sir.
Q. You say when you left there you took Davis' pistol with you?
A. Yes, sir.
Q. What kind of a pistol was it?
A. Smith & Wesson, double action, pearl handle, nickel plated.
Q. You are trying to throw that pistol on Davis are you?
A. It is the pistol that he had.

Q. That is the pistol that was stolen over here, wasn't it?
286 A. It was the pistol that come from Mr. Rigsby's.
Q. You were sitting on the boat. You say you didn't want to shoot anybody?
A. We wanted to get across the creek.
Q. How far is from the mouth of the river up the creek?
A. I don't know how far it is; it is a good distance.
Q. Why did you want to cross the creek?
A. We wanted to get on the other side.
Q. What for?
A. We were going over here on this new railroad.
Q. What new railroad?
A. I forgot the name of it; it runs from McAlester.
Q. You were on the right side of the creek then, wasn't you?
A. No, sir.
Q. What did you cross above there for, above the mouth of the creek?
A. There wasn't any ferry below the mouth that we knew of.
Q. No ferry?
A. No, sir; unless it was 8 or 10 miles.
Q. When you got there you say you called somebody out?
A. Myers done the talking; he called for the ferryman.
Q. Who came out?
A. I don't know who it was.
Q. Somebody came to the door and hallooed to you?
A. Yes, sir.
Q. Hallooed from the porch?
A. I don't know whether it was from the porch or not; it was dark.
Q. He said he didn't have the key?
A. Yes, sir.
Q. And then he went into the house?
A. I don't know where he went. He staid a long time if he went in the house.
Q. You hallooed somebody out of the house. He answered you and said he didn't have the key; he would go and get it, and after a while they came down?
287 A. They were gone about an hour and a half I think.
Q. In the mean time you crossed the slough?
A. Yes, sir.
Q. Boyd was sitting in the boat when they came?
A. Yes, sir.
Q. Where were you sitting?
A. On the edge of the bank with my back to them.
Q. You did not know they were coming until they got right up to you?
A. Yes, sir.
Q. I thought you said you didn't want anybody to see you?
A. That is the reason we wanted to cross the creek.
Q. You had just come from a robbery with your spoils on you?
A. Yes, sir.
Q. Hadn't been long since you had robbed Taylor in that neighborhood?

A. Yes, sir.

Q. You three robbers were going through that night?

A. Yes, sir.

The COURT. It seems to me that is a little outside——

Col. CLAYTON. I will show you it is not outside if you will wait. (To the witness.) You three men who had robbed these men were there together at the boat in the nighttime with your plunder upon you, unwatchful enough to allow men to slip up on you and you never see them?

A. I heard them coming; I never turned around or paid any attention to them.

Q. Why didn't you? If you were running around in the nighttime and concealing yourselves from the public gaze, why did you not look and watch? You had been laying around in the woods. Somebody was coming; why didn't you watch to see who it was; see whether it was the ferryman, or whether he had a crowd after you to arrest you? It was right in that neighborhood where the robbery was committed, and
288 yet you say you let these men come up on you and not see them; you didn't even look around. How do you account for that?

A. I heard them at the house when they came back with these other parties. I suppose he had been off after somebody else.

Q. How did you hear them?

A. I heard them shut the door or make some noise.

Q. Then you knew they were coming?

A. Yes, sir.

Q. You let them come upon you under these circumstances?

A. Yes, sir; Boyd was sitting on the boat with his face to them; I suppose he saw them.

Q. Boyd had laid his gun down?

A. Yes, sir; he laid it down before they came.

Q. How is it if that is true they made Boyd lay down his gun?

A. He started out of the boat when they told him to, and he picked up the gun and they told him to lay it down.

Q. They disarmed you?

A. Yes, sir.

Q. Did they disarm this man Boyd?

A. I don't know whether they did or not.

Q. Did he draw a pistol.

A. If he did I didn't see him.

Q. You didn't draw a pistol?

A. No, sir.

Q. Davis took his pistol out to surrender?

A. I don't know whether he took it out to surrender or what, but any way he fell close to it.

Q. Men who wanted to get a reward for the conviction of men commenced killing them when the men had made no assault on them. Is that right?

A. Yes, sir.

Q. So as to loose the reward?

Col. GRACE. That is owing to how the reward was offered.

289 Col. CLAYTON. The reward was offered for their capture and conviction. You can't convict a dead man. [To the witness:]

They shot Davis down, and they shot you down, and I believe you say they fired at Boyd, didn't you?

A. No, sir; the second shot fired hit me, and I never saw anything.

Q. Instead of arresting you they were shooting you down; you hadn't fired a shot?

A. No, sir; I didn't fire a shot.

Q. Not one of you had fired a shot, had you?

A. No, sir.

Q. I suppose they shot Dansby in the back themselves, didn't they?

A. I don't know. Dansby fell right close to Myers.

Q. They must have shot Dansby in the back, I reckon, themselves?

A. I don't know who shot him.

Q. You do know who shot Davis?

A. I know one of the crowd shot him; I don't know which one of the crowd it was, though; they were all strangers to me.

Q. You ran off and took that man's pistol with you?

A. Yes, sir.

Q. Well, now, you were so brave when you got Taylor and these other places rounded up, when you got that pistol why didn't you go to work and fight it out.

A. I wasn't able to fight, or anything; I couldn't use a pistol.

Q. You three robbers just allowed these negroes to come up on you and capture one of you and shoot one of you down, and you didn't do anything?

A. We didn't have a chance to do anything.

Q. You say you didn't shoot?

A. Yes, sir.

Q. You know Boyd didn't shoot?

A. I don't know whether Boyd shot or not; he didn't shoot before I fell.

Q. Who fell first, you or Dansby?

290 A. I don't know; I didn't know that Dansby was shot until after I got up and picked up the pistol.

Q. What kind of a pistol was this?

A. It was a Colt's 45, walnut handle.

Q. Was it as long as this one?

A. Yes, sir.

Q. How many pistols did Boyd have?

A. He had two.

Q. Is this pistol one of them.

A. Yes, sir; it looks like it.

Q. How many pistols did Davis have?

A. He had one.

Q. Did one of you have a Winchester?

A. No, sir.

Q. What became of the Winchester that Davis had when you robbed Taylor?

A. Davis had traded that off.

Q. You claim that your fire was built below the slough?

A. Right at the mouth of the slough, right on the bank.

Q. I asked you if it was below; you can be above or below at the mouth, can't you?

A. Yes, sir; it was below the mouth, right at the mouth.
Q. Where did you strike up with Davis?
A. Close to Dripping Springs, right at Dripping Springs.
Q. Where are Dripping Springs?
A. In Crawford County.
Q. How far from the place you robbed Rigsby?
A. I don't know how far it is.
Q. How long did it take you to get to Rigsby's?
A. About half a day.
Q. What day did you meet Davis there?
A. It was on Saturday.
Q. When did you and Davis separate; you had been together at the robbery of Taylor?
A. About a week after the robbery, I suppose; I' wasn't a week, it was 3 or 4 days after the robbery.
Q. You say it was Davis that suggested robbing this man
291 Rigsby?
A. Yes, sir.
Q. He had hard work to coax you and Boyd into it, didn't he?
A. I don't know about that.
Q. Is that the pistol you spoke of being taken away from him?
A. No, sir.
Q. Is that the other pistol that belonged to Boyd?
A. No, sir; that is not the pistol that belonged to Boyd.
Q. Look at it closely.
A. Yes; I believe that is the one they took from Boyd.
Q. How do you know it?
A. I know he took the handles off and put these handles on.
Q. Where did he get the handles?
A. I don't know.
Q. Why did he change these handles?
A. The other pistol had a noted mark on it.
Q. Whose mark was it?
A. I don't know.
Q. Had the pistol been stolen?
A. I don't know whether it had or not.
Q. You know there was a noted mark on the handle of this pistol, and he took them off and put these on?
A. Yes, sir.
Q. That is the pistol, then?
A. Yes, sir; it looks like the pistol; I wouldn't swear to it.
Q. Do you know who this pistol belonged to when it had the other handles on?
A. It belonged to Boyd.
Q. How do you know?
A. He carried it; I suppose it belonged to him.
Q. Still he was trying to get a noted mark off it?
A. Yes, sir.
Q. He certainly had some object in that?
A. If he had any I don't know what it was.
292 Q. When did you first see him with that?

A. It was after the Taylor robbery that I got with him.
Q. He had it then, did he?
A. Yes, sir.
Q. Were any of these goods that you got from Taylor or from anybody else taken to Abe Boyd's that you know of?
A. No, sir; I never was at Abe Boyd's that I know of.
Q. When these men first came down on you they threw their guns on you and told you to surrender, and that they had a description of the men that robbed Taylor, and you all walked up on the bank and surrendered, meek and quiet like cooing doves; just let these negroes take you up on the bank?
A. They had the drop on us; we could not do anything else.
Q. You laid out in the woods all night and next day?
A. No, sir; we laid out on the bank of the river.
Q. I thought you said you laid out in a tree top?
A. Yes; that is when I was shot.
Q. Did you get hungry?
A. No, sir.
Q. Did the wound hurt you any?
A. Yes, sir; it hurt me a good deal.
Q. Where did you go when you left there?
A. I got up and went about half a mile below there, and got a fellow to put me across the river in a skiff.
Q. There was a skiff half a mile below?
A. It was on the other side of the creek from where I was.
Q. There was a skiff half a mile below?
A. Yes, sir.
Q. House there?
A. No, sir.
Q. No house?
A. No, sir; there was no house; he had some hooks set out, and he was down there looking at them.
293 Q. Where did you go from there?
A. I went from there over to where I was arrested.
Q. How long after the killing was it until you were arrested?
A. I suppose it was something near two weeks.
Q. While you were arrested Mr. Horne came down and identified you, didn't he?
A. No, sir.
Q. Was there anybody arrested with you?
A. No, sir.
Q. Did you ever see Myers' hat he had on when he was killed?
A. Yes, sir.
Q. Do you know where that came from?
A. I know where he told me it came from, is all I know about it.
Q. Mr. Shanning identified the hat as being the one that was taken from him. Was you present when he identified it?
A. Yes, sir.
Q. You was not in that robbery?
A. No, sir.

Q. He had on a coat and vest that was taken from Rigsby when he was robbed? Did he have anything on that was taken from Taylor when he was robbed?

A. I don't know whether he did or not.

Q. You had the watch?

A. Yes, sir; I had the watch when I was arrested.

Q. What did you have upon your person or about you that was taken over here at Rigsby's when you were in that fight?

A. I had the money and a couple of pocket knives.

Q. Is that all?

A. Yes, sir.

Q. You had all the money?

A. No, sir; I had part of the money.

294 Redirect examination:

Col. GRACE. You say that the fellow in that skiff had some hooks set out?

A. Yes, sir; after I had been setting there a while he came down to look at them.

Q. They were fish-hooks?

A. Yes, sir.

Q. You got him to set you over?

A. Yes, sir.

MARTIN BYRD recalled for cross-examination.

Mr. MARMON. How long before the Sunday night of the killing was it that you saw Judge Taylor?

A. I couldn't tell exactly when it was that I saw the judge.

Q. Give me an idea about how long it was before the killing—how long before the killing that you saw him last.

A. I reckon it was in the same week.

Q. Was it not just 2 days before the killing? Was it not on Friday before the killing Sunday night?

A. It may have been, but I don't remember what day it was.

Q. When you saw him you asked him if there wasn't a reward out for the parties that robbed him, and if it was good?

A. No, sir; I never mentioned it to him at all.

Q. Are you certain of that?

A. I am satisfied I didn't.

Q. You didn't ask him if the reward was good?

A. I don't remember of seeing him at all to say anything to him.

Q. If you were asking him anything about it, you would re-

295 member it, would you not?

A. I am satisfied I would have remembered it.

Q. Then you didn't ask him anything 'bout it?

A. He was talking to some one at Scullyville about it.

Q. Did he not say something to you about it or you to him, and did you not ask him if the reward was good?

A. No, sir. I didn't ask him anything about the reward was good at all.

Q. Did you hear him say anything about it?

A. I disremember whether he said anything about it at all.
Q. What was it you said about Scullyville?
A. He was talking to some men that was there at Scullyville.
Q. You don't know whether he was talking about this reward or not?
A. He went to the show case and was showing the kind of knives that was taken from him.
Q. I am not talking about that; I am talking about whether he said anything about this reward or not.
A. I didn't hear him say anything to me about it at all.
Q. You didn't know there was any reward out for them?
A. He didn't tell me anything about it.
Q. You didn't know there was any reward out for them?
A. No, sir.
Q. You didn't know anything about that at all?
A. No, sir; because I couldn't tell who the reward was out for.
Q. You didn't know there was any reward out for the parties who robbed him?
A. No, sir.

Redirect examination:

Col. CLAYTON. You say you do not remember of Mr. Taylor saying anything to you about the reward?
A. No, sir.
296 Q. You knew he had been robbed?
A. Yes, sir; I am satisfied——
Q. I mean that you heard that he was robbed.
A. Yes, sir.
Q. Robbed by some men up there?
A. Yes, sir.
Q. Did you hear who the men were who robbed him?
A. No, sir; the men were strangers to me.
Q. Did you know these men prior to that time?
A. No, sir.
Q. Did you know Davis?
A. No, sir.
Q. You knew Boyd?
A. Yes, sir.
Q. And you knew that Boyd was not a stranger to Mr. Taylor, didn't you?
A. I knew that Boyd wasn't a stranger to him.
Q. You knew that Boyd lived in that community?
A. Yes, sir.
Q. And you had heard that the men who robbed Taylor were strangers to him?
A. Yes, sir.
Q. You knew that Boyd and Taylor were acquaintances?
A. Yes, sir; I was satisfied of that.

JOHN TAYLOR.

Mr. MARMON. Do you know Martin Byrd?
A. Yes, sir.

Q. I will ask you if you saw him a day or two before this killing up there at the ferry?

A. Yes, sir; I saw him 2 or 3 days before that.

Q. I will ask you if you told him, or he asked you, anything about the reward for the parties that robbed you?

A. Yes, sir; I told him all about it; described them.

Q. You told him there was a reward, and you described the parties?

A. Yes, sir; I described them as near as I could.

Q. You told him the amount of the reward?

A. Yes, sir; I told him what I had offered.

297 Q. I believe you are judge of Skullyville County?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. Who was present when you were talking?

A. We were standing on Lije Fannan's porch in Skullyville, and he took me to one side and asked me about it, and I up and told him.

Q. You described the men and told him you had offered a reward?

A. Yes, sir.

Q. What reward did you offer?

A. I offered $100 each for the men and $25 for the watch and $10 for the Winchester.

Q. Please state if the reward was offered for their capture and conviction.

A. Yes, sir.

Q. They were to be convicted?

A. Yes, sir; that is the way the reward went.

Q. Upon their capture and conviction?

A. Yes, sir.

Q. Did you tell Martin Byrd that, that they were to be taken and convicted?

A. Yes, sir. He asked me if I had offered a reward; he said he had heard I had.

Q. Do you know that young gentleman over there, Mr. Standly?

A. Yes, sir.

Col. GRACE. Of course you make him your own witness on that.

Col. CLAYTON. Please state if you were robbed prior to this killing.

A. Yes, sir.

Q. How long before?

A. On Thursday night, the 20th of March.

Q. Sunday night, 6th of April, 2 weeks and three days before the killing occurred?

A. Yes, sir.

Q. State the circumstances under which they robbed you; just make it as short as you can.

298 A. He came there a little before dark.

Q. Who did?

A. Standly did. And he told me his name was John Haynes, and he had come from Jerry Fulsome, which is about 20 miles from there, and he was on his way to hunt work. I told him he could stay there. He said he wanted to stay. He was a nice looking fellow, fixed up.

Q. Was he dressed nice?

A. Yes, sir. I told him he could stay there awhile. While he was there he was talking about hiring, and I proposed to hire him. I told him he could work awhile for me. I had sent my boys down in Scott County after cattle, and he could work for me, and we agreed about the price, which was to be 50 cents a day. He was to help to feed and do things around the place. My wife and hired girl was out at the lot. I told them to go to the house with him and get his supper. When I came in it was dark and he was out of doors.

Q. Did you have a lantern?

A. No, sir; the lantern was in the house. I walked out on the porch to wash my hands and I told him to go down to the lot and help my brother-in-law feed the horses, and then he came back in and got the lantern, and then they fed the horses and came back in, and my brother-in-law said he had forgotten his coat down by the hay pens. There was something said about his better getting his coat, and he took the lantern and went on down. It was a very dark night, and when gets the coat he came back and he went in the other room; I was in the other house, I could hear them talking, and he came out and came into my room; I heard him tell this young man to come into that room and sleep in there.

Q. You heard him tell that to this young man?

A. Yes, sir.

299 Q. You heard your brother-in-law tell this young man?

A. Yes, sir. And my brother-in-law came into our room, and he was in there a minute or two; I think he came in after some liniment to rub on his throat; he had a sore throat; I was fixing to go to bed; I had taken off my coat and vest, and the door flew open and Standly came in with a six-shooter and the other fellow with a Winchester; Standly had a pistol.

Q. What did he say to you?

A. He said, Throw up; and I said, What is it? And he said, "Sit down," and my wife looked up and said, "Sit down, Mr. Taylor." And I sat down right there in the chair, and he made me move over to the back side of the house like; I was sorter about the middle of the floor, and the girl had gone to bed. He had her get up and come in.

Q. Made her get up in her night clothes?

A. No, sir; she had time to slip on her clothes; he kept hurrying her up; just four of us there besides them.

Q. You and your wife and brother-in-law and the hired girl?

A. Yes, sir.

Q. There wasn't two or three men there then?

A. No, sir; just me and my brother-in-law.

Q. Of course they had the drop on you?

A. Yes, sir.

Q. Go on and state what they did.

A. Then he asked for some ropes, and I told him to go to the barn, and he enquired for a handkerchief. I told him the handkerchief was in my coat pocket, and he ordered the hired girl to get the handkerchief and he ordered me out on the floor and tied my hands behind me. I told him there was no need of that. I said to him, "I know what you

300 want," and he said, "What?" And I said, "I guess you want our money." And I said, "You can get that out of my pocket."

And he said, "How much you got?" I said, "About $100." And he said, "Is that all you got?" And I told him "Yes." And he said, "Oh, hell, that won't sort o' do." He said, "You have got more than that. We are going to have it." And he tied my hands behind me with the handkerchief. It was hurting my hands, and after a while he untied them and put them in front.

Q. Had he got the money before this?

A. He got it out of my pocket after he tied my hands behind.

Q. How much money did he get?

A. I think about $127, as well as I can count.

Q. Did he get anything else?

A. Yes, sir; he took my pocketbook, and he got the money and a gun and my wife's watch.

Q. Where did he get that?

A. He got that in the wardrobe.

Q. Where was Davis, the other man, all this time?

A. He was standing in the door with a Winchester. And they got a 32 Winchester from me, and they got a Smith & Wesson 38 nickel-plated pistol, and they got 4 pocket knives, I believe, and a razor and a brush and a good many things that they picked up around there; I don't know what all they did get; got some handkerchiefs and one thing and another.

Q. I suppose they got pretty well all they could?

A. Yes, sir; everything he noticed I reckon.

Q. What did they do then?

A. They took the lantern, and after they had went through everything they left. They left about 10 o'clock. It was about 8 o'clock when they commenced to rob us.

Q. About 2 hours at the job?

A. Yes, sir. They told me not to go out of the house that night.

301 Q. Please state if you received any letters after that?

A. Yes, sir; I taken a letter out of the office on the 7th day of April.

Q. Do you know the handwriting on that envelope (handing witness an envelope)?

A. No, sir.

Q. You received that?

A. Yes, sir; I got that out of the mail while they were in Skullyville with the dead man. They were standing there and I had come to town.

Q. It was on Monday the 7th, after the killing. You don't know the handwriting?

A. No, sir; I do not.

Redirect examination:

Mr. MARMON. The reward was to be paid on the capture of the parties, was'nt it?

A. The reward read, "Capture and conviction."

Q. You have already paid the reward, haven't you?

A. Yes, sir.

Q. Never been any trial or anything of the kind?

A. No, sir.

Q. All you wanted was the parties identified; was that it?

A. That is the way the rewards reads. "Capture and conviction." I put it in the "Elevator" here.

Q. When they captured Standly and killed Davis you paid the reward?

A. Yes, sir; I paid out $225 reward.

Q. You paid it to Martin Byrd?

A. I paid $20 to Martin Byrd and $80 on an order that he gave Bud Harris.

Q. That is $100 to him?

A. Yes, sir; and I paid Col. Yoes $100; that was for the capture of Standly; and $25 to pay Monroe on the order from Bill Mickle for the watch.

Q. You paid Martin Byrd $100, and $100 to Col. Yoes for the deputy that arrested Standly, and $25 for your watch?

A. Yes, sir.

302 Col. CLAYTON. You recovered that watch?

A. Yes, sir.

(Followed by Carbary's "J.")

303 (Carbary's "J.")

OCT. 27, 1890—1:30 p. m.

JOHN TAYLOR recalled.

Col. CLAYTON. When we adjourned for dinner I was asking you about this robbery?

A. Yes, sir.

Q. You went on and told what things were gotten from you. If this defendant made any threats against you, Standly, while he was robbing you, I want you to state it.

A. Yes, sir; he was hunting for more money; he said I had more money than that, lots of it. I told him that was all I had. And he was hunting around, and one time he said: "You heard talk about burning men's feet and hanging them," and asked me how I would like that? I told him pretty bad, but he wouldn't find any more money. He said if he did it wouldn't be good for me.

Q. That was Standly?

A. Yes, sir.

Col. GRACE. I suppose the reason the gentleman asked that was to show a crime was committed and to merely prejudice the jury against the defendant. We ask that it be ruled out.

The COURT. It is a part of the crime. They are entitled to all of it.

Col. GRACE. We save an exception.

304 Thereupon the defendant rested.

Whereupon the Government produced and examined in rebuttal the following-named witnesses: Richard C. Brinson, Samuel R. Mode, and Robert Hall, who testified respectively as follows:

305 RICHARD C. BRINSON:

Col. CLAYTON. Do you know Eugene Standly when you see him?

A. Yes, sir.

Q. Will you point him out?

A. I think so.
Q. Where is he? (The witness examines the jury for some time.)
Q. You need not look in the jury for him.
A. I was just looking around.
Q. Get up and look around if you want to.
A. The sun is shining against that glass. (As the witness is going towards the defendant, Mr. Byers, counsel for the defense, says, "Look over there (pointing to the jury) and you can get a good square look at him."
Col. CLAYTON. Do you think you know him?
A. I expect so.
Q. Where is he?
A. They have got him hid somewhere (the witness is standing close to the defendant, and he points to him and says): "Ain't that the man? Is it him? He looks a little like him."
Mr. BYERS. Is it the man?
A. I can't see good, and the sun shining on them windows.
Col. CLAYTON. What do you think about him being the man?
A. He looks a good deal like him to me.
Q. Please state if he be the man; when did you see him the first time?
A. At my house.
Q. When was that?
A. The 15th of March, I think, last.
Q. Anybody with him?
A. No; there was no other man came in with him. He came there a little bit before night and wanted to stay all night, and I taken him in.

306 Col. GRACE. We object until he identifies the man.
Col. CLAYTON. Mr. Brinson, step out a moment. Call Samuel R. Mode.

307 SAMUEL R. MODE:

Col. CLAYTON. Were you present when Richard C. Brinson was robbed?
A. Yes, sir.
Q. Do you know who robbed him?
A. He is right there (pointing to defendant).
Col. GRACE. We object to it.
Col. CLAYTON. There are two reasons why I think I can show it. The robbery of Brinson was committed in March. This man was present, and he has sworn he was not at the Brinson robbery. I brought him in and he said he didn't recognize him. I will contradict him on that.
Q. (to witness). He is the man you pick out; that little fellow, the defendant. What name did he go by?
A. Something near a year ago he went by the name of Harry Eckles. I think though he claims his name is Eugene Standly here.
Q. When was it that Brinson was robbed?
A. In March, on a Saturday night.
Q. Last March?
A. Yes, sir.
Q. Where did he live?
A. The other side of Sanbois, about 3 or 4 miles from it.

Q. How far from where Dansby was killed?

A. I disremember; I forget how far they call it from where the old man lives; I think 35 miles from Skullyville; I don't know where he was killed at.

Q. Did you know him before the robbery was committed—Standly?

A. Yes, sir; I have seen him.

Q. He went by the name of Harry Eckles?

A. Yes, sir.

308 Q. Were you present when the old man was robbed?

A. Yes, sir.

Q. Did you live there?

A. Yes, sir. And he sat around there talking some; I talked some to him, and he got up and went out of doors and he came back—he sorter grunted as he got to the door, and went on out of doors and came back in. He walked right behind me, sorter that way, and went back to the shotgun I had when I was hunting, and grabbed it up and sorter throwed it down on us, and this fellow was in the door; I don't know who he was.

Q. What kind of a looking man was he?

A. I don't know. And he throwed a pistol on us and told us to get in the corner, and mother-in-law was in the other room where my wife was at; she was crying; and he kept ordering us around and asking where the money was at, and mother-in-law told him in the trunk where I was sitting on; he had told me to sit on the trunk. He told me to sit the trunk out, and I set the trunk out to him and he unlocked the trunk; I think he unlocked the trunk; some of them gave him the key and he unlocked the trunk and he got the money out of that.

Q. How much?

A. I had $10 in that trunk—that is what they said—I gave my money to them to put away. I had $10, and the old lady had some money, I don't know how much. He got through with that trunk and he reached under the bed and got another trunk out. That trunk had the old man's money in it—old man Brinson.

Q. How much money did he have in that?

A. I don't know.

Q. Did he get that money?

A. Yes, sir; this fellow got it.

Q. Did he take anything else?

A. Some socks and stockings, I think.

Q. When was that?

A. In March.

309 Q. In the Indian country?

A. Yes, sir; Choctaw Nation.

Q. This is the man you say (pointing to Standly, defendant)?

A. Yes, sir; that is the man.

Cross-examination:

Col. GRACE. When did you see Standly?

A. In March; he was at our house, I think.

Q. When did you see him after that?

A. The next time I seen him was down here in the jail.

Q. Who went to the jail with you?

A. Old man Brinson.
Q. Did you go down in the jail to see him?
A. Yes, sir; Mr. Pape, I think, went down in the jail with us.
Q. Wasn't he pointed out to you there?
A. Not to me, no, sir; I identified him myself.
Q. Didn't they say, "Call up Standly?"
A. No, sir; Pape and I was walking side by side, and I said, "There he is." I don't think I got quite even with him until I noticed him.
Q. Certain of that?
A. Yes, sir.
Q. How long after the robbery was that?
A. I disremember.
Q. About how long?
A. It was along in July, I think, we were down here; I won't swear for certain. Mr. Pape perhaps can tell you.
Q. The robbery was in March?
A. Yes, sir.
Q. That is 3 or 4 months afterwards. He got $10 from you?
A. And he got some money from me on the side of the house they said was mine, which made $11.20 of mine.
Q. You say that was in the night.
A. Yes, sir.
Q. Are you any relation to old man Brinson?
310 A. Yes, sir; son-in-law.
Q. You married his daughter.
A. Yes, sir.
Q. Who else was there?
A. I don't know who was with him.

311 RICHARD C. BRINSON, recalled.

Col. CLAYTON. State if you were robbed.
A. Yes.
Q. How much did they get from you?
A. They got $100, and about $60 from the house; they got some from my wife and some from Sam Mode.
Q. How much did they get of yours?
A. 4,100 and a little over $35.
Q. Where was your money?
A. In the trunk.
Q. Who came to your house; how many came there?
A. There was one who came there to stay all night; he came there I reckon, I guess, about half an hour by sun and wanted to stay all night. He said he was hunting a job of work. I taken him in. After supper I was getting ready to go to bed. I was pulling my boots off, and he went out, and he came back and brought somebody with him and they stopped at the door and he made a lunge for the shotgun; he seen where it was sitting; he grabbed it up and by the time I got to look at him he had it down on me.
Q. What did he say to you?
A. I got up by the time he had the gun pointed on me. He ordered us all to get in the corner and set down; then he went on and robbed.

Q. Did he get anything else beside money?
A. Socks and mitts, and one thing and another.

Cross-examination:

Col. GRACE. Did you go to the jail at the same time that Mr. Mode did?
A. Yes, sir.
Q. Who went down in the jail with you?
A. The jailor, I reckon, and Mr. Mode.
Q. Did you find anybody there?
A. Yes, sir; a good many.
312 Q. Did you call Standly up and talk to him?
A. Yes, sir.
Q. Called him up and had a talk to him?
A. Talked a couple of words. They said he was sick, and he didn't have much to say.
Q. You called him out. You knew him by name over there?
A. I knew him by his countenance.

313 ROBERT HALL:

Col. CLAYTON. Do you know Standly?
A. Yes, sir.
Q. Point him out.
A. That is him over there (pointing to Standly, the defendant.)
Q. That little fellow?
A. Yes, sir.
Q. State if you were robbed; if so, by whom and where and when?
A. About the 17th of March; near about the 17th.
Q. Last March?
A. Yes, sir.
Q. What time?
A. In the evening, about 3 o'clock. Standly and another man, I am not sure whether Boyd or not, but think it is, came there to the house where a man by the name of Schrimgour and I used to have a store-house. Standly was one of the men, but I am not positive whether Boyd is or not, but think he is.
Mr. MARMON. We object to what he thinks.
The WITNESS. He came there and got some peaches and then went off, and that evening, between sundown and dark, I was fixing to go home to supper; nobody in the store but me. As I walked out on the front step to lock the door to go home I saw these two men coming back. I waited until they came up. Standly said, "I reckon we will have to take supper with you to-night." I told them all right. He said let them have some sardines. I walked behind the counter to get them; when I turned my back to get them he cocked his pistol on me.
Q. Who did?
A. Standly. And said, "Hold up your hands." I turned around and asked him what he said. I understood him, but I wanted to have time to think about it a little. He said, "Hold up your hands, God damn
314 you, or I will shoot you," I told him, "All right, I reckon I have it to do, you have got the advantage." I held up my hands. He staid there with the pistol cocked on me; then the other man, who

I think is Boyd, came around there and asked me where the money was. I told him in the drawer. I had a shot sack I always carried the money in when I went to supper. It was just a little box house, and he took the shot sack and took the money.

Q. How much money was in the sack?

A. About $40, I think, between $40 and $50, and I had $20 in my vest pocket.

Q. Did he get that?

A. He taken that too.

Q. Did he take it out of your pocket?

A. Yes, sir.

Q. Which one took that out?

A. It was Mr. Boyd, I think.

Q. It wasn't this one (pointing to Standly)?

A. No, sir.

Q. Did they get anything else?

A. Yes, sir; when they got what money I had there, he asked me where my pistol was. The scabbard and belt was lying on the shelf, and he asked me where my pistol was. I told him I didn't have any there. Schrimgour had gone to Laflore that day and taken the pistol with him, He kept asking me if there was any guns around there. They looked all around and didn't see any. There was a shotgun and Winchester on the other side of the house, and the largest man he went around and got that Winchester and loaded it and came around then, and Standly just walked around the house and taken the pistol off me and got a whole lot of other things, and taken a pair of my wearing pants I had hanging up there, and 2 pair of jean pants and 2 pairs of overalls and some shirts, I guess 3 or 4, and a hat and a pair of boots and a pair of shoes.

Q. Where did they put them?

A. They got me to tie the legs of the overalls and put them in there, and they took that.

Q. They made a sack of the overalls?

315 A. Yes, sir, and they taken some provisions, too.

Q. Sardines?

A. Yes, sir; and crackers and such things.

Q. What time did they get through with you?

A. They staid there about half an hour, I reckon; it was getting dark.

Q. Where was your store located?

A. Wilburton, Choctaw Nation, on the Choctaw Coal and Railway Company.

Q. How far from here?

A. I expect about 75 miles from here.

Q. That was on the 17th of last March?

A. Yes, sir.

Q. Does this property belong to you?

A. I had an half interest and Schrimgour had the other half.

Q. Each article was of some value?

A. Yes, sir; to me.

Cross-examination:

Mr. MARMON. You never saw Boyd before?

A. Not that I know of.

Q. Did you ever see Standly before?
A. Not that I know of.
Q. You identified him positively?
A. Yes, sir; I am certain.
Q. You don't know whether it was Boyd or not?
A. I am not positive, but I believe he is.
Q. But you don't know?
A. No, sir; not positively.
Q. It might have been another man that is a little taller than he?
A. No, sir; I think about the same size.
Q. But you can't swear this man was there?
A. No, sir; I wouldn't like to.

Cross-examination:

Col. GRACE. Why can't you tell the other man as well as you can Standly?

A. Because I paid more attention to Standly; he staid closer to where I was.

316 Q. You paid enough attention to both men to know them; if you had watched the man half a day you would not have known him any better. You can't see into his skin nohow. You can not tell the other man?

A. No, sir; not positively.
Q. You came down here with Mickle?
A. Yes, sir.
Q. Therefore you knew him without any trouble, because Mickle had him?
A. I knew him as soon as I saw him at Mickle's house.
Q. Do you know Burnie Denny?
A. No, sir.
Q. When was that robbery?
A. About the 17th of March.
Col. CLAYTON. You saw him when Mickle had him?
A. Yes, sir.
Q. State whether he had on any of the things he stole.
A. He had on a pair of boots, they looked like the same ones; they were the same make and the same number, but I couldn't swear to the boots.

317 Col. GRACE. I will read the application in one of these robbery cases for witnesses.

Col. CLAYTON. I don't see that the oath he made in the application is better than he made on the stand.

Col. GRACE. It has this tendency: We are not ready in all these other cases; now, Col. Clayton has mustered in his witnesses in his case, knowing that we would not have ours here, and undertakes to prove it on one side without hearing anything on the other side.

The COURT. Well, let it be considered as in. I will admit it.

Col. GRACE. I will read it, then.

The COURT. It is admitted to show you are using diligence in the case; you can not interject these facts set up there as facts proven. It simply shows you are using diligence in that case.

318 Col. GRACE (reads application for witnesses):

In the United States district court for the western district of Arkansas, August term, 1890.

UNITED STATES, PLAINTIFF,
vs.
EUGENE STANLEY, DEFENDANT. } Robbery.

The defendant in the above-entitled cause, upon oath, says that he can not safely go to trial in the above-entitled cause without the testimony of the following-named witnesses, to wit, Bernie Denny, Sarah Denny, and Nancy Denny, all living about fifteen miles S. W. from Shake Rag, in the Choctaw Nation.

By these said witnesses defendant expects to prove that at the time of the alleged robbery he was at their house, and was not engaged in said robbery.

The defendant further says that the above facts are true and material, and that he is poor and actually unable to pay the fees of said witnesses. He therefore prays that they be summoned at the expense of the United States.

I, Eugene Stanley, on oath, say that the above statements are true.

EUGENE STANLEY.

Subscribed and sworn to before me this 18th day of October, 1890.

STEPHEN WHEELER,
Clerk,
By W. B. PAPE, *D. C.*

Col. GRACE. The witnesses in that case were allowed.

(End of the testimony.)

319 Whereupon the Government closed its case.

The defendant then, for the purpose of impeaching their evidence, introduced the evidence of Martin Byrd and Jo Byrd, as taken by the U. S. commissioner in the preliminary examination, which is as follows, to wit: (See page 224.)

320 Thereupon the defendants then produced and read in evidence the application of defendant Standley, for witnesses, made in case of the United States vs. Eugene Standley, for robbery, which is as follows, to wit:

In the United States district court for the western district of Arkansas, August term, 1890.

UNITED STATES, PLAINTIFF,
vs.
EUGENE STANLEY, DEFENDANT. } Robbery.

The defendant in the above-entitled cause, upon oath, says that he can not safely go to trial in the above-entitled cause without the testimony of the following-named witnesses, to wit, Bernie Denny, Sarah Denny, and Nancy Denny, all living about fifteen miles SW. from Shake Rag, in the Choctaw Nation.

By these witnesses defendant expects to prove that at the time of the alleged robbery he was at their house and was not engaged in said robbery.

The defendant further says that the above facts are true and material, and that he is poor and actually unable to pay the fees of said witnesses. He therefore prays that they be summoned at the expense of the United States.

I, Eugene Stanley, on oath say that the above statements are true.

(Signed) EUGENE STANLEY.

Subscribed and sworn to before me this 18th day of October, 1890.

STEPHEN WHEELER, *Clerk.*
By W. B. PAPE, *D. C.*

Whereupon the defendants closed the defence.

When the Government produced and offered the said Martin
321 Byrd as a witness, the said defendant objected to his competency as a witness, on the ground that he had been convicted of the crime of larceny, and sentenced to the penitentiary on said conviction, and offered the record of said conviction in evidence, which was admitted by the court; whereupon the Government offered a pardon purporting to have been granted by the President to the said Martin Byrd, which recited that said Byrd was an important witness in a case at Little Rock; which said pardon is as follows:

"Benjamin Harrison, President of the United States, of America to al' whom these presents may come, greeting:

"Whereas, Martin Byrd, in the United States district court for the western district of Arkansas, was indicted, charged with larceney, convicted May 10th, 1884, and on the 19th day of May, 1884, was sentenced to one year's imprisonment in the Detroit House of Correction, Detroit, Michigan, and whereas the said Martin Byrd has been discharged from said prison, he having seerved out the term for which sentenced, and was accredited for good behavior while in prison, and whereas the district attorney for the western district of Arkansas requests the pardon of said Martin Byrd, in order to restore him to competen*t*cy as a witness in a murder trial to be had July 1st, next, in said district court at Little Rock, in which request the judge of said district court unites. Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Martin Byrd a full and unconditional pardon.

"In testimony whereof I have hereunto signed my name and cause the seal of the United States to be affixed.

"Don' at the city of Washington, this 27th day of June, A. D., 1890, and of the independ*a*nce of the United States the one hundred and fourteenth.

"(The place of the seal.) "BENJAMIN HARRISON.

"By the President,

"JAMES G. BLAINE,
"*Sec. of State.*"

322 But the court overruled the objection to said pardon and permitted the said witness to testify, to which decision and ruling the defendant at the time excepted.

Whereupon, the Government introduced W. B. Pape, jailor, as a witness, who testified that a certain letter marked "D," and purporting to be a letter from defendant Standley to his mother, was in the handwriting of defendant Standley; that he had seen the letter before, and also that 'wo certain cards or orderes, which were at the same time shown him, were orders that he had paid off (said orders were not offered to the jury as evidence, but simply examined by Mr. Pape, the witness); that he had occasion to see Standley's handwriting frequently, but had never seen him write; that said two orders were in Eugene Standley's handwrite. To each and all of which statements in regard to said orders, and as to their admisibility as a standard of comparison of handwriting the defendant, by his counsel, objected, and the court overruled the objection, and the defendant at the time excepted; and thereupon the Government offered in evidence the letter marked "D," which is as follows, to-wit:

"FORT SMITH, ARK., *August 6th*, 1890.

"Mrs. M. E. STANDLEY:

"DEAR MOTHER: Your kind letter in care of Mr. J. C. Byers, was received some time ago. You want to know what became of all of my money. The parties that arrested me at Atoka took $170.00 from me. It was turned over to the court here, and I have never got it yet. I had in all about $18.00 when I was arrested the last time. My wound is healed up, but still pains me at times. I have not employed Mr. Byers to defend me. I want to get a lawyer with some influence. Think I can beat the murder charge against me on jurisdiction. I have never received
323 a letter from Cousin Norma yet. Guess she has never written. You can send me a box of something to eat if you like. I have never received but one letter except the one in care of Mr. Byers. Received it when I was first put in jail. With much love to you, brother, and sister, I will close for this time.

"Affectionally, your son,

"EUGENE STANDLEY."

To the admission of said letter in evidence the defendant, by his counsel objected, but the court overruled said objection and the defendant at the time excepted.

The Government, to further maintain the issues its part, produced and examined one F. M. Rigsby as a witness in the case in chief, who testified that he lived at Dora, in Crawford County, Arkans; that on the 5th day of April, about dusk, his store was robbed by *h*tree men, two of whom were the defendants and the other a man called Myers, and described the goods taken from the store and minutely all that was said and done by them at the store, going into details of the robbery and its circumstances, to which testimony the defendants at the time objected and said objection b'ing at the time overruled the defendant at the time excepted.

To further maintain the issues on its part the Government introduced Jacob P. Jackson as a witness, who testified that certain documents he

brought with him had been and then were in his custody as national secretary of the Choctaw Nation; that *they* purported to be the rolls of those colored men who had registered to become citizens of said nation, and the other roll the list of such people who had elected to receive $100.00 and leave said nation; that said rolls did not show on their face or by any endorsement thereon that 'hey had been filed in the office of the national secretary, or that either of them was a certified copy of the rolls or lists of citizens as shown by the records of the Department
324 of the Interior at Washington; but that said witness had found these papers in his office when he assumed the duties of national secretary. To the admission of these documents in evidence (which are too voluminous to copy and which have been taken away by the said national secretary) the defendant at the time objected, but the court overruled the objection and admitted them in evidence, and the defendant at the time excepted.

To further maintain thei' issues on the part of the Government it introduced and examined T. D. Ainsworth, who testified that he was one of the commissioners of registration to register freedmen, and that 'he name of John Dansby appeared on the roll as one who had elected to leave the nation, but he did not know whether he had received the $100.00 or not, and that the name was not in Dansby's handwriting, but was in that of the clerk of the board. It was not necessary for Dansby to sign any papers. I put the question to him myself and ascertained his wishes in the premises. Judge Welch, clerk of the board, put his name on the registration book under my direction, to the admission of which statements as evidence the defendant objected. The objection was overruled, and the defendant at the time excepted.

The said defendants, to further maintain the issues on their part, produced and examined as a witness one James Maghee, who testified that he lived 1½ or two miles from Martin Byrd's; that Richard Butler came to his house on Sunday night—the same night of the killing—about ½ after 9 o'clock at night and borrowed his Winchester rifle, and that immediately after the firing at the ferry said witness went down to the ferry and to Byrd's and found said Richard Butler there and the gun also there. It was also proved in the case that said Richard Butler was with Martin Byrd at the ferry and participated with said Byrd and co-operated with said Byrd against the defendants in the shooting at the ferry.

325 The defendant then offered to prove by said James Maghee that said Richard Butler said, at the time he borrowed said Maghee's gun, as aforesaid, that there were some men down to the creek—at the rock ford—where they keep the ferry, and he thought it was them robbers; that that was what he wanted the gun for, and what he and the others with him were going to do with the men at the ferry, to all of which proffered testimony the Government, by its counsel, objected. The objection was by the court sustained, and the defendants, by their counsel, at the time excepted. (At the time of the offer of the testimony of James Maghee, on the above point, Richard Butler was in attendance on the court, having been summoned on the application of the defendants as a witness.)

To further maintain the issue on the part of the Government, on cross-examination of the defendant, Standley, who had been examined in his own

behalf, but who had not been asked in reference to an alleged robbery of John Taylor by the defendant Standley and one Davis, the Government, by their counsel, asked the said defendant, as a witness, if he was in the Taylor robbery, and proceeded to inquire as to the plans of said robbery and all the details of its execution, and the presence of Taylor's wife and family, the amount of money and various articles taken; to each and all of said questions and the answers thereto the defendant objected, but the objections were overruled and the evidence admitted by the court, and the defendants at the time excepted.

To maintain the issues on the part of the defendants they had introduced and examined Judge John Taylor as to a conversation between him and Martin Byrd in regard to a reward, but nothing else; whereupon the Government, by its counsel, on cross-examination, asked said witness in regard to an alleged robbery of said witness by defendant Standley, before
326 the killing of said Dansby, and said witness testified in answer thereto, giving in detail the facts and circumstances of the said robbery, the way it began, proceeded, and ended, all that was said by the partie', the tieing witness' hands with a handkerchief, the search for money, the amount found, the watch and pistol and other articles taken, and that defendant Standley threatened to burn the witness's feet to make him tell where there was more money; to each and all of which several statements the defendant objected, but the court overruled the objections and the defendant at the time excepted.

The defendant Standley, in his examination in chief, was interrogated as follows by his counsel:

"Q. I will ask you if there are some other indictments here against you in this court?" when he answered, "Yes, sir; there are two other indictments against me."

"I will ask you in regard to these two others, whether you had anything to do with them?" to which question defendant Standley answered, "No, sir; I hadn't anything to do with them."

"Q. You were not present at all?"

"A. No, sir."

Whereupon the Government, to maintain the issues on its part when it, by the district attorney, cross-examined Standley, asked him in substance if he denied the Brinson robbery, when he answered, "Yes, sir."

Whereupon the Government, to further maintain the issues on its part after the defence had rested, produced and examined one Samuel R. Mode as a witness, who testified that he was present when said Brinson was robbed, and that defendant Standley was the man who robbed him, and gave the details of the robbery; to each and all of which statements
327 the defendant Standley objected, but the objections were, by the court, overruled, and the defendant Standley, by his counsel, at the time excepted.

Whereupon the Government, to maintain the issues on its part, produced and examined as a witness one Ricard C. Brinson, who testified as to the robbery of himself and all the details of the same; to each and all of which statements the defendant Standley at the time objected, and the objection was overruled by the court and the testimony admitted, to which decission the defendant, by his counsel, at the time excepted.

Whereupon the Government, to maintain the issues on its part, introduced and examined Robert Hall in rebuttal, who testified that he knew defendant Standley; that witness was robbed about the 17th of March last by defendant Standley, and he thinks Boyd also; the witness then proceeded to give the details of said robbery; to each and all of said statements defendant at the time objected, but the court overruled the objection, and the defendant, by his counsel, at the time excepted.

The above was all the testimony in the case.

Whereupon, after argument by counsel to the jury, the court charged the jury as follows:

328 In the circuit court of the United States, within and for the western dist. of Arkansas.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANLEY, ALIAS Eugene Stanton. } Murder.

Judge's charge.

TUESDAY, OCT. 28th, 1890—4:35 p. m.

PARKER, *J.:*

GENTLEMEN: The defendants, John Boyd and Eugene Stanley, are before you charged with the crime of murder, for having on the 6th day of April, 1890, at the Choctaw Nation, in the Indian country, taken the life of John Dansby, a negro and not an Indian, by wilfully and with their malice aforethought shooting him with a gun. That, in short, is the first count of this indictment.

The second count charges the same set of facts with the exception of the allegation going to the jurisdiction, and that differs from the first count in the indictment by alleging that Eugene Stanley, alias Eugene Stanton (he is charged that way in both counts), and John Boyd were white men and not Indians. The proof, without any controversy, shows that Stanley

329 is an Indian; therefore you will confine your finding, if it should be a verdict of guilty, to the first count in the indictment, if the proof shows that fact with reference to Stanley and you should find him guilty. If it shows such other facts as are necessary to give the court jurisdiction, as are alleged in the first count of the indictment, then your finding will be on that count, provided you should find a verdict of guilty. If you should find a verdict of not guilty it may be general in its character and it would be responsive to both charges.

Now, you have had the facts that have been offered before you on either side of this case. From these facts you are to get at the truth. You are not enabled by that alone to arrive at a verdict, because there is something else enters into your verdict besides these truths you may obtain from the witnesses in the case, and that is the law that is applicable to the truth, whatever it may be. These two elements enter into every verdict of a jury—they go to make it up. Under the method of procedure in the courts of justice of the country the rules of law that may be invoked on either side of a case are given by the court, leaving it to you to make the application of such rule as is applicable to the truth, in your judgment.

Now, it becomes necessary to see what elements enter into this case—elements that are to be derived from the truth of the case—what facts you must find in order to enable you to find that this case is one of murder. You must find, as a jurisdictional fact to start with, that John Dansby was a negro and not an Indian. If he was a colored man, or a
330 negro, by blood, that makes a prima facie case of jurisdiction. It makes a case of jurisdiction that is good until it is overthrown by proof showing a state of case that would divest the court of jurisdiction. There has been evidence offered in the case going to show his true status, offered for the purpose of showing that by blood he was a colored man, a negro, and further showing that under the law of the United States reviving a clause of the treaty of 1866, entered into between the Government of the United States and the Choctaw Indians—reviving, I say, a clause or an article of the treaty of 1866 that had lapsed by limitation instead of becoming a registered citizen, or a citizen by adoption of the Choctaw Nation, as he might under the law of Congress and the laws of that Nation, being a colored man by blood he registered for the purpose of receiving the $100.00 that it was provided each colored man should receive who saw proper not to become a citizen but to elect to leave the country. In order to make him a citizen of the Choctaw Nation, under the treaty and laws, so that this court would not have jurisdiction of a case where parties upon the other side of it, parties, say, that were charged as these defendants are with crime, were Indians by blood, or either one of them, in order to divest the court of jurisdiction the evidence must show that John Dansby was registered as a citizen of that country; that he elected to become a citizen, and registered as such. Then, under the treaty and the law he becomes a citizen as though he was an Indian by blood as far as the jurisdiction of this court is concerned. In a case where a party who may be
331 charged with a crime is an Indian by blood, or by adoption, and proof fails to show that, but shows that he registered for the purpose of receiving his $100.00, then his status as a citizen of the United States is not changed. He continues to be a citizen of the United States as is in effect alleged in the first count of this indictment. The purpose of that allegation is to assert that he is a citizen of the United States, because negroes, or colored men, as well as white men and all other kinds of men, are jurisdictional citizens, except these people who are exempted from the jurisdiction of the courts of the United States called Indians, either by blood or those who may become such by adoption, to such an extent as to divest courts of the country of jurisdiction over them.

Now, you are to look into that question first, because that is a preliminary step to be taken by every jury in a case—to ascertain and pass upon the question as to whether or not the court has a right to try—whether or not you have a right as a jury in that court to set in judgment upon the merits of the case, and to pass upon the merits. If the evidence shows that state of case then I say to you that under the law the court has jurisdiction.

Now, let us see what other things enter into this charge. By taking them in detail and letting our minds go back to the evidence that has been offered we can more easily understand the nature of the charge than when we undertake to consider all the propositions at once. Let us then go about this thing in detail. Let us take it up and examine what propositions

enter into this charge to make it up. In the first place, the proof
332 must show that this man who is alleged to have been killed by these defendants is dead. That is the first thing—that John Dansby is dead. You must find that from the evidence. Secondly, that he died by violence of the kind named in the indictment; that is, he died because of the injury inflicted on him of the kind named in the indictment. The indictment charges that Dansby was shot with a gun, and that he died of a wound so inflicted. Now, you must be satisfied of that, that is to say, he was shot with a gun, or a kindred weapon, such as a pistol; that the wound was inflicted upon him as is charged in this indictment, and in consequence of the infliction of the wound he died, the wound thereby causing his death. That is the second proposition you are to inquire into from the evidence to see whether it is established or not, and of course you will understand that all these propositions are to be established beyond reasonable doubt.

Now, of course, upon the question as *as* to whether the wound produced the man's death or not you can only find it inferentially at best. You take into consideration the character of the wound, the part of the person upon which it was inflicted, the condition of the man at the time of receiving the wound, his condition thereafter, and when he died, and if you are satisfied beyond a reasonable doubt that that produced the result called death, and satisfied of that from the testimony, why, that proposition is established.

Now, there is a third proposition that is necessary to be established, and that is that the act of shooting was done wilfully and with malice
333 aforethought, because these are features which go to make the charge murder. A man may be killed, and may be killed by having received a gunshot wound, but unless he is wilfully killed, and killed wih malice aforethought, his killing is not a case of murder. Therefore these things are to be looked into. You are to see whether from the facts and circumstances of the case the kind of a proposition is presented in which is involved this element of the crime of murder. Now, you can not tell whether these elements exist or not until you know what they are, for the reason that they have what is called a technical or legal meaning attached to them. The word wilful and the phrase malace aforethought have a meaning that the law gives to them, and it is that meaning by which you are to be controlled; it is that meaning of these words that your are to be governed by in your deliberations. It is peculiar to a charge of crime of this kind. It is sometimes called a legal meaning that is attached to these words. Therefore it is necessary right in this connection that you should have the definition of these words, or of the word wilful, and the phrase malice aforethought, the definition that the law attaches to them, because you are sworn to try this case by the law and the evidence.

The word wilful, as used in connection with the charge of murder, such as that which is preferred in this indictment against these defendants, means an intentional killing, and not an accidental killing. It means an act which results in death that is intentionally done, and one that is not
accidentally done. Now, there is a great difference between that
334 which means in the law accidental, and that which is intentional. The law fastens intent to every act that is not an accident; every

act that produces death that is outside of the definition of the word accident is intentional in the law, whether it grows out of a specific design to take life, or whether it grows out of gross carelessness, or whether it arises from a condition of mind that prompts the possessor of that mind to be engaged in some other wrongful or criminal act, and in the execution of it a life is taken. That which is an accident in the law is something that occurs after the exercise of the care that the law requires to be exercised to prevent its occur'ence. When a man exercises the amount of legal care exacted by law, and something occurs beyond that, that is not his wilful act. The law recognizes that he does not do it wilfully. But when he does an act which naturally or reasonably, or probably, from its nature and the way it is done, produces a certain result, that is held to be an intentional result, because the act as done in that way is intentional; and whenever the act is done, and it is an act that may naturally or probably produce a certain result—whenever the act is done intentionally the result is intentional; for example, if a man presents a gun at another and fires it at him, the fact of drawing the gun and presenting it shows that he wills what he does, shows that the act is a wilful act upon his part. And when that state of facts exist, the act of presenting and firing the gun is recognized by common observation and common experience as a wilful act. If that act produces death, because there is a known connection between the act and the result which is probable, which is usual and which is
335 reasonable, the party is said to have intended the result, and consequently to have willed the result. Now wilful and malice aforethought are something that can be found only by inference, that can only be found by the circumstances in the case, by the nature of the act done, and the way it was done, and the character of the weapon used, bearing in mind that the law holds every man to know the nature of the weapon that he uses, the purpose for which it is constructed, and the results that naturally and reasonably are produced by it. That is recognized by the law as a matter of common knowledge within the mind of every man who has arrived at the years of discretion. For that reason when a man presents a gun or a pistol at another, and shoots it at him, the law says he intends to kill him, because the killing is a result that is natural or probable or reasonable.

Now, a word in this connection as to how you may find that act was wilfully done:

"The presumption that the law recognizes is that a man is held to have intended the natural and ordinary consequences of his act. Every sane man, who is a voluntary agent, acting upon a motive, must be presumed to contemplate and intend the necessary, natural, and probable consequences of his own acts. If one voluntarily or wilfully does an act which has a direct tendency to destroy another's life, the natural and necessary conclusion from the act is that he intended so to destroy such person's life. So, if the direct tendency of the wilful act is to do another some bodily harm, and death in fact follows as a probable consequence of the
336 act, it is presumed that he intended such consequences, and he must stand legally responsible for it. So, where a dangerous and deadly weapon is used with violence upon the person of another, as this has a tendency to destroy life, or to do some great bodily harm to the person assailed, the intention to take life or do him some great bodily harm is a necessary conclusion from the act."

You take the act done. Now, your common observation teaches you that a gun or pistol fired at another within shooting distance of him will put his life in danger, it may probably destroy it. For that reason, because we recognize that, the law says to us when an act of that kind transpires, that any citizen upon the right of self-defense may do whatever may become necessary, even to the extent of taking life, to turn aside that danger. It is recognized by the common understanding of men as being so imminent, the danger to life so imminent, so immediately pending over the party, and about to fall upon him, that the right to invoke whatever means are necessary to turn aside that danger then and there springs into existence, and is in the hands of the citizen to be used by him, in the face of such a set of facts. This may be done because of the nature of the act, because of its character, because of the results that are usually produced by it. This is a good test of when an act is wilful. If that act is wilful, that is, if the party draws and presents and fires the gun, the act of drawing and presenting and firing it, being prompted by the will of the party, that act is wilful, and if death ensues the death is wilful, and that is the way you may find it.

337 That is the first element of the crime of murder. It is not the trait that distinguishes murder from any other homicide, because that may exist when you kill a man in self-defense; you do it wilfully. And it may exist in voluntary manslaughter. But there is something else which distinguishes murder from any other homicide, any other grade of killing, any other grade of man-slaying, and that is the phrase malice aforethought. When that exists it is murder. Now, let us see what is meant by that; let us get an understanding of it if we can; let us comprehend it fully, that you may make a proper application of it to the facts in this case. If the facts show that it exists in this case and that John Dansby's life was taken wilfully, and this other element surrounded the transaction known as malice aforethought, the killing of John Dansby would necessarily be murder. Now, what is it? It is defined in a general way to be the doing of a wrongful act without just cause or excuse, in such a way and under such circumstances as to show that it was done wrongfully; that it was done in the absence of that which would give the party the right to defend against it, or that it was done in the absence of mitigating circumstances. And it is defined again as the doing of a wrongful act without just cause or excuse, and in such a way as to show that he who did it had a heart void of social duty, and a mind fatally bent upon mischief.

Let us see how the law defines it, and then again how the law tells us it may be found to exist. It can only be found by circumstances, because malice aforethought, like *wilfully*, is something which exists in the

338 mind, and whenever there is a thing which exists in the mind that is necessary to be found to make up the elements of the case, as you can not get into the mind to know what is going on there, and you could not tell what was transpiring if you could get into it, you must learn it in some other way, and there must be some rational way by which you may learn it, some way that rational men would adopt, because you are not authorized to adopt any other method than that which is reasonable in arriving at conclusions, and there is a reasonable way, which is the way that the law recognizes as a proper way by which men may arrive at con-

clusions; it is from the nature of the transaction, the nature of what takes place, the character of the thing done, and all the surrounding facts and circumstances that you are authorized to take into consideration, to see what was the nature of the thing done, whether it was an innocent act or a criminal act, and, if a criminal act, what was the character of that criminal act.

"Malice aforethought is the grand criterion which distinguishes murder from other homicide, and it is not so properly spite or malevolence to the deceased in particular as any evil design in general; the dictate of a wicked, depraved, and malignant heart; a purpose to do a wicked act; and it may be either express or implied in law. Express malice is when one with a sedate, deliberate mind and formed design doth kill another, which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces, or former grudges, and concerted schemes to do him some bodily harm. So in many cases, when no malice is expressed, the law will imply it,
339 as when a man willfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. And if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person, except of abandoned heart, would be guilty of such an act upon a slight or upon no apparent cause."

"Malice is an intention to do bodily harm; a formed design to do mischief. It has also been defined as a deliberate intent to kill. It does not necessarily import especial malevolence towards the individual slain, but also includes the case of a generally depraved, wicked, and malicious spirit, a heart regardless of social duty and deliberately bent on mischief. It imports premeditation. Therefore there must logically be a period of prior consideration, but as to the duration of that period no limit can be arbitrarily assigned. The time will vary as the minds and temperaments of men, and as do the circumstances in which they are placed. The human mind acts at times with marvelous rapidity. Men have sometimes seen the events of a lifetime pass in a few minutes before their mental vision. Thought is sometimes referred to as the very symbol of swiftness. There is no time so short but that within it the human mind can form a deliberate purpose to do an act; and if the intent to do mischief to another is thus formed as a deliberate intent, though after no matter how short a period of reflection, it none the less is malice."

"Malice is an intent of the mind and heart, the doing of a
340 wrongful act without just cause or excuse, or in the absence of that which justifies the act, or which reduces the grade of the crime. Whenever a wrongful act is done without just cause or excuse, and in the absence of mitigating circumstances, which produces death, it is murder, whether it grows out of special spite or animosity, or a specific design to take life, or a purpose to do some other act of a wicked and malignant and criminal nature, which because of its nature and the way it is done a human life is taken, malice aforethought exists, because that is the doing of a wrongful act without just cause or excuse which results in murder. It evinces a formed design to do such mischief as may deprive a fellow being of life."

Now, you learn how it may be ascertained, the existence of it.

"Malice is an intent of the mind and heart. There is never presented to a jury direct evidence of what was the intent of the man's heart at the time."

You can not tell of its existance by direct proof, bearing in mind the distinction between these two kinds of evidence, positive or direct proof and circumstantial evidence. Positive or direct proof is the proof which shows the existence of the very thing itself that you are hunting after; it is the thing itself that is shown to exist. Circumstantial evidence is proof that may be equally cogent, and equally powerful proof of the existence of the thing, but is not the thing itself, but is that which shows its existence in the shape of the surrounding facts and circumstances, in the shape of that which attends every transaction in life, which goes to characterize it one way or the other, which goes to show either that it
341 was a criminal act, a criminal transaction, or that it was a transaction that was honest and upright and void of crime.

"There is never presented to a jury direct evidence of what was the intent of the man's heart at the time. He is the only possible and direct witness to that, and if he meant so to testify he would plead guilty. The existence or non-existence of malice is an inference to be drawn by the jury from all the facts in the case. The emotions of the heart, the processes of the mind, areto us, or to any one outside of the individual, exhibited by the acts which the individual performs, and you are entitled to infer what his intent was, what were the processes of his mind and the feelings of his heart, by a careful study of the acts which he performs and all the other external indications which he may have given of what his state of mind and heart was. As an eminent text writer has put it, there is no case of malicious homicide in which malice is not inferred from attendant circumstances, no case in which it is demonstrated as expressed."

It can not be demonstrated as express.

"We have no power to ascertain the certain condition of a man's heart. The best we can do is to infer his intent more or less satisfactory from his acts. Now, a person is presumed to intend what he does. A man who performs an act which he knows will produce a particular result is from our common experience presumed to have anticipated that result and to have intended it. Therefore we have a right to say, and the law says, that when a homicide is committed by weapons indicating design, then it is not necessary to prove that such design existed at any definite
342 period before the fatal blow. From the very fact of a blow being struck we have a right to infer as a presumption of fact that the blow was intended prior to the striking, although at a period of time inappreciably distant, and thus we frequently find the statement laid down in reported cases and by text writers that malice is to be inferred from the use of a deadly weapon."

That naked statement might be misleading.

"Malice is to be inferred from the attendant circumstances which surround the transaction, and the jury have a right, and it is their duty, to look at these attendant circumstances to see what character of act it was, to see what was the condition of mind of the party or parties who engaged in that act, as being the only way that they can arrive at the conclusion as to whether it was an act accompanied with malice aforethought or the converse of that, in which there was an absence of that element of the crime of murder."

Now, anything that shows deliberation, anything that shows a premeditated purpose to do a wicked or wilful act that might result in death, is evidence that may be considered by the jury as evidence of malice and of the existence of malice aforethought. For instance, the law lays it down as a principle, if premeditation is shown, if the purpose to kill directly existed in the mind of the party or parties who killed, or the purpose to do a wilful act that may result in death is shown by the actions of the party to have a previous existence, an existence prior to the time of
343 the killing, that shows the existence of malice aforethought, provided there is an absence from the case of that state of facts which goes to show the party had a right to do what he did do. The law lays it down that the deliberate use and selection of a deadly weapon shows premeditation, shows that the act was thought of beforehand, and whenever a party entering upon whatever unlawful or criminal enterprise he may enter upon, prepares himself with a deadly weapon with the purpose of using it in a wicked or unlawful enterprise, if it be one of that character, enabling him to consummate and carry out that enterprise, the selection of a weapon for that purpose is evidence of the existence of malice aforethought, is evidence of the existence of a purpose to do a wrongful act without just cause or excuse in such a way as to show that the party who does it has a heart void of social duty and a mind fatally bent on mischief. That is the general definition of malice. It shows a purpose to do a wrongful act without just cause or excuse. That is the way you are to find it. You go to the killing. You ascertain how the killing was produced, the way it transpired, the way it was done, you see what character of weapon was used, you see whether that weapon was prepared beforehand, whether it was deliberately and wilfully used at the time, and in a state of case where the evidence shows that the killing was wilfully done, if there is an absence from the case of that which shows that the party had a right to so wilfully kill upon the law of self-defense, or that the killing was wilful, but there were mitigating facts attending it, why the proof which shows it was wilfully done shows it was done with
344 malice aforethought, and in a case of that kind the very same degree of proof that establishes a wilful killing would establish a killing with malice aforethought.

Now, there is entering into this case two propositions that it becomes necessary for the court to give you the law upon, and one of them may be given appropriately in this connection. It is claimed by the Government that these defendants, together with another party, had entered into a conspiracy—that means an agreement to do a wrong, or to do a criminal act, that is what a conspiracy is—to commit upon these persons at that place the crime of robbery, either upon Dansby or upon any of the others there, it is immaterial which, or upon all of them. That is the claim upon the part of the Government, and that this killing took place while these two defendants, together with the third party, Davis or Myers, who was killed, were attempting to consummate this purpose of robbery; that the primary design was not to kill, but to rob, and that the killing transpired in the course of the execution of that design, and upon that state of facts the Government claims that this is a murder upon the part of all who participated in that purpose to rob, while it is disclaimed upon the part of the defendants that there was any purpose to rob there, but that the purpose of these

parties, Dansby and the others who were at that ferry, was to arrest these defendants and Davis, and that in the course of that attempt to arrest Dansby and Davis were killed. That is the claim upon the part of the defendants in the case.

Now, that makes it necessary that the court should give you the
345 law bearing upon a state of case where a number of persons enter into an agreement, or have an understanding, either expressly or tacitly, entered into to commit the crime of robbery, and in the course of its commission a man is killed who is an innocent party, and not engaged in the robbery or attempt to rob. It is necessary that you should have the law bearing upon that proposition. Then again, because the other principle has been invoked, it is necessary that the court should give you the principles of law defining the right of the citizen to make an arrest, stating to you in what cases he can make an arrest, leaving it to you to make the application of whatever one of these principles you think, in your judgment, or according to the conclusion you may come to from this evidence, is applicable to the truth of the case. Now, first as to the proposition or state of case where there is an agreement or conspiracy entered into by a number of persons to commit a crime or an unlawful act, and in the course of the commission of it a person is killed, if the unlawful act or crime agreed to be done was dangerous to life, or likely to inflict great bodily harm upon the person or persons who were the objects of this crime, or it was homicidal in its character—that is, a crime which, from its nature and the way it was committed, jeopardizes the life of the party upon whom it was sought to be committed—from its nature and the way it was to be carried out or committed, or it was of a character that from the way it was committed it would likely inflict great violence upon the persons of those or of the one who it was sought to commit it upon, I say when a number of persons have entered into an agreement to commit a crime of that kind, and they proceed to its accom-
346 plishment, and the crime is of that character that it will necessarily or probably require the use of force and violence, which may result in the unlawful taking or endangering of life, because of the nature of the act and the way it is done, every party to such an agreement who participates in the act that is sought to be done, which is the primary purpose of those who entered into it, such as robbery—every party, I say, who has entered into that agreement, and who enters upon the commission of the crime—in the execution or commission of which the life of some one is taken, is responsible, or will be guilty of the crime growing out of the killing, although it may be done by one of the accomplices, if a crime exists. Say, in this case, if the understanding upon the part of these three parties was to commit a robbery upon Dansby or any of these men there, and in the execution of that agreement these two defendants were participants in that attempt to rob—that is to say, if they were present at that place—and were in any way aiding, or assisting, or counciling, or abetting the robbery at that time, and some one of the three who had so conspired, so agreed together, fired a shot which took the life of Dansby, that shot would be the shot of all three; they would all three be responsible for it. Why is that so? The law used to be that if a number of persons agreed to do any unlawful act, and the life of an innocent person was taken by any one of those who had entered first into the agreement and upon the execution

of that crime, although the act of killing might be collateral to the main purpose—that is, something that did not necessarily or naturally or probably spring out of the execution of that purpose, why they would all be responsible. And there is a case given away back in the reign of Charles II (to illustrate this principle) of the killing of a chicken. Parties went out to rob a hen roost, to steal a fowl, to steal chickens, a number of them with no purpose to kill, no design of that kind. One of them, for the purpose of getting the chicken with ease, fired upon it, and killed the owner of it in his yard or place where they were seeking to get it. The courts at that time held them all responsible for that killing. The courts of this age, with a spirit of greater humanity and greater justice, as I believe, draw this distinction: In a case of that kind all the parties would not be held responsible for that killing, although the act was unlawful. But if the act agreed to be done, or entered upon by a number of persons is an act which, from its nature and the way it is usually executed, would endanger human life by its execution, they are all responsible for the taking of that life, upon the principle, that is self-evident in the law and is founded in justice and reason, that every man who has arrived at the years of discretion must be held to have intended the necessary, natural, or probable consequences of his acts. If a number of men agree to do an act which, from its nature or the way it is to be done, is an act that will put human life in jeopardy, then the putting of human life in jeopardy, or the destruction of human life, is a necessary and a natural and a probable consequence of the act agreed to be done by the party, and upon the principle of the law I have already announced to you, it is but equal and exact justice that all who enter upon an enterprise of that kind should be responsible for the death of an innocent person, that transpires because of the execution of the enterprise then entered upon, and because that enterprise is one that would naturally and reasonably produce that result.

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Now, the law defines the char'cter of crimes that, if a number of persons enter upon the commission of them they may be affected by a result of this kind. It says robbery is one of them. Why? Robbery has the very element that enters into it to distinguish it, to make it a crime, as that of violence upon the person, and it is but a probable and natural and reasonable consequence of an attempt to commit that crime that a human life will be destroyed. The very demand of a man who robs—"Your money or your life!"—implies that human life is in jeopardy; so that when a number of persons agree to and enter upon the commission of the crime of robbery, and a person is killed, who is an innocent person, in the execution of that purpose to rob, all the parties who have so entered into the agreement and enter upon the execution of the purpose to rob are equally responsible. The pistol or gun fired is the pistol or gun of each and every one of them. There are other crimes of a like character, and the law, I say, draws this distinction, and bases it upon a just ground. It says that any crime which, from its nature and the way it is usually committed, will necessarily or probably or reasonably endanger a human life, is a crime that, if a number of persons agree to commit and enter upon the commission of, will involve them all in the consequences that ensue. The commission of robbery is a crime that may cause the death of an innocent person. As I have told you, robbery is one of them, and arson is another. If a

number of persons agree to commit arson, and go out and burn a house, from the nature of that crime and the way it is usually committed it necessarily endangers human life. Accounts are brought to us all the time of the destruction of life by the firing of buildings, by the destruction of buildings, when the crime of arson is committed, because of the nature of that crime and from the very results that may be produced by it, that death may be produced as a natural and reasonable and probable result; all those who agree to commit it and enter upon its commission, and if in its commission some one of them destoys life as a natural and probable consequence of the act of arson, they are all responsible for whatever crime grows out of the destruction of the life. The same with burg*al*ry. A number of persons agree to commit the crime of burg*al*ry, that is a crime which, from its nature and the way it is committed, probably or reasonably or naturally jeopardizes life. So, when a number of persons agree to commit that crime and enter upon its commission, and an innocent person is killed by one of the parties, it is the act of all. The same with the crime of rape. From its character and the way it is committed a human life is put in jeopardy. And when a number of persons agree to commit that and enter upon its commission, and a human life is destroyed, the destruction of that life and the consequences of it fall equally upon all. So you may take this character of crimes where the primary purpose, as in the case of robbery, is directly against the property of the man sought to be robbed; and in the crime of rape th act is directly against the person sought to be raped; and in the cr me of burg*al*ry, where robbery is
350 the prompting motive, and in the rime of arson, where revenge is the motive which prompts the party to destroy the property of another, and because of their nature and the way they are committed, from that set of facts it arises as a reasonable and probable and rational conclusion that death is likely to be produced by them. All are held responsible for the consequences if death be a consequence that may grow out of the commission of an act of that kind.

Now, let us see what the decided cases say upon that. We first read what was decided in the case of the United States v. Ross, 1st Gall. (U. S.), 624; 2nd Crim. Law Mag., 487, note.

"The case of the United States v. Ross is frequently cited as supporting this doctrine" I have ennunciated. "In that case, which was upon an indictment for being present, aiding, and abetting in the murder of a colored man on board the American schooner Pocahontas, it appeared that the prisoner, with others, came on board the vessel, armed with muskets and other weapons, drove the crew below, wounded two persons, knocked down the mate, and killed the colored man." Their purpose was to capture the vessel and run it off, I suppose, as was frequently done at that time, and run it off into the slave trade or into piracy. It was a very common thing even around our own coasts, not very many years ago, either, for men to watch their opportunity and capture vessels and run them off and use them as piratical crafts. "There was no evidence as to who inflicted the mortal wound, but it was proved that the seizing of the vessel was by preconcert, and with a determination to accomplish the result, whatever the consequences, and that the defendant was present when the killing
351 took place, armed in the same maner as the others, and acting as their cheif." The purpose was not to kill; that was not the pri-

mary purpose, but to seize the vessel; but the seizing of the vessel by violence and force was the doing of an act which would naturally, or reasonably, or probably produce death. For that reason all those who had entered into that preconcerted action—who had entered upon that wicked and unlawful enterprise of taking possession of that vessel—were held responsible for the death of the colored man, and here is what Judge Story said about it. Story, J., in his charge to the jury, said: "In the present case the prisoner and his associates, if the evidence be believed, had entered into a most atrocious conspiracy, in which they were but too successful. The murder (for there can be no doubt it was such in some one of the party) was committed in the course of the execution of that conspiracy. It was a natural, though not a necessary, consequence of the attempt to execute it. The conspirators appeared to have armed themselves for the purpose of insuring success at all hazards."

It is true that Judge Story, in another part of his charge, states the rule as to the responsibility of one for the acts of others, done in the prosecution of a common unlawful design, in almost the same words as are used in State v. Shellevy, supra, but he adds: "More especially will the death be murder if it happens in the execution of an unlawful design, which, if not a felony, is of so desperate a character that it must ordinarily be attended with great hazzard to life; and, a fortiori, if death be one of the events within the obvious expectation of the conspirators."

352 Now, reading from the same author, 486, note, in the case of Ruloff v. People, a case tried before the courts in New York, and finally appealed to the supreme court of New York, and the supreme court in passing upon the question said: "If the homicide was committed by one of several persons in the prosecution of an unlawful purpose or common design, in which the combining parties had united, and for the effecting whereof they had assembled, all were liable to answer criminally for the act, and if the homicide was murder all were guilty of murder, assuming that it was within the common purpose." The evidence showed that the blow which caused the death was inflicted by one of three burglars while in the act of robbing the store; it was uncertain whether the accused actually inflicted the blow, and thus the question was raised as to his responsibility for such an act committed by one of his confederates. There was evidence from which to infer a purpose on the part of the burglars of resisting to the death any one who should oppose them, and the charge of the judge that such an illegal purpose must have been formed before the actual commission of the offense, although not necessarilly at the time when the parties went out with the common purpose of larceny, is held by the court to be a correct statement of the law.

Here is a case that was passed upon years ago by the supreme court of Illinois in which a number of parties had burglarized a house in Chicago,

353 stolen a lot of goods, and some of the parties, whether they had been in the burglary or not, they were not able to say, but some of the parties took these goods and were starting towards a fence house with them—they call it in the city a "fence house," a place where they receive stolen goods—and while standing in front of that house unloading the goods they were interrupted by policemen that some one of them shot. The court in that case said it was not the act of all, because the fact of unloading these goods there at that place was not an act which naturally or

reasonably or probably in its execution would jeopardize human life, but if it had been an act that did put human life in danger, then the principles of law that I have given you would have been applicable; and here is what the court declares the law to be: "The principle which underlies and controls cases of this character is the elementary and very familiar doctrine, applicable alike to crimes and mere civil injuries, that every person must be presumed to intend and is accordingly held responsible for the probable consequences of his own acts or conduct. When, therefore, one enters into an agreement with others to do an unlawful act, he impliedly assents to the use of such means by his coconspirators as are necessary, ordinary, or usual in the accomplishment of an act of that character, but beyond this his implied liability can not be extended. So, if the unlawful act agreed to be done is dangerous or homicidal in its character, or if its accomplishment will necessarily or probably require the use of force and violence, which may result in the taking of life unlawfully, every party to such an agreement will be held criminally liable for whatever any of his coconspirators may do in furtherance of
354 the common design, whether he is present or not." Lamb v. The People, 2nd Crim. Law Mag., 472.

Now, you pass upon the question as to whether or not the purpose to rob is a crime that is committed by force and violence, and when attempted the exercise of force and violence is necessary to consummate it. That is one of the very ingredients of that crime. Then, is it an act of that character which may result in the taking of life unlawfully, or which would be dangerous to life? If so, it would be homicidal in its character. Or would the accomplishment of that crime necessarily require the use of force, and that force so used as to jeopardize human life? If so, it is the doing of an act that puts human life in danger, and which puts it in danger as a natural or probable or reasonable consequence of the act agreed to be done, and I repeat again, that if the evidence shows in this case that there was a purpose entered into by these two defendants, together with Davis, to enter upon the crime of robbery upon Dansby, or any of these parties at that place—I say any of them, because Dansby had a right to defend the others, or the others had a right to defend him as against a crime of that character—if they had agreed to enter upon a crime of that kind and had gone to the place where the attempt was made to commit it, and were in the act of committing it, and in the course of the commission of that act some one of the party fired the shot which took the life of Dansby, that shot was the shot of all, and in such a case as that if the evidence shows that state of facts you have that which shows premeditation, you have that which shows deliberation, you have that which
355 shows a purpose that was conceived and matured beforehand, to do an act which was naturally and probably dangerous and deadly in its character, to take the property of these men, or of a man from his presence or from his person by the exercise of violence. That is the crime of robbery.

Now, the converse of that proposition I have given you, as recognized by the supreme court of Illinois, and is justly recognized, where the unlawful act agreed to be done is not of a dangerous or homicidal character, and its accomplishment does not necessarily or probably require the use of force or violence, which may result in the taking of human life unlaw-

fully. No such criminal liability will attach merely from the fact of having been a party to such an agreement. That would repudiate the doctrine enunciated in the old English case, where a party went out to steal chickens, because the stealing of a chicken is not anything that necessarily or naturally or probably from the way it is executed would jeopardize a human life. But if it is a demand made upon a person for his money, whether that demand is made in words, or made by an act of violence, or attempted violence, that presents a state of case where the crime attempted is very different, because in the first case named, of the stealing of the fowl, the killing would be collateral to the purpose to steal, and in the case of robbery the killing is an act that naturally and reasonably and probably springs out of a purpose to rob, and all who agree to enter upon that robbery, and who are present at the place where it is being committed, or
356 attempted to be committed, while the parties are in the act of committing it, they are aiding and assisting and counciling and abetting in its commission, and are responsible for the crime growing out of that robbery which may result in the taking of human life. And I repeat that the fact that the robbery is being committed, if a human life is taken in the commission of it, shows deliberation, shows premeditation, shows that state of case that exhibits that it was thought of beforehand, so as to bring into existence malice aforethought. That doctrine has been recognized when it comes to statutory crimes by all the States, where they say by their respective statutes, that he who kills in an attempt to rob, to commit arson, to commit rape or burglary, or any of these high crimes, is guilty of murder, without any further ceremony about it; that whenever the proof under these statutes show that fact they but show the state of case that under the law that is administered here, is a state of case which evidences deliberation, premeditation, and shows the existence of malice aforethought, and consequently the existence of murder.

Now, that is the principle that has been invoked upon the part of the Government. You are to take it; you are to find out what the truth of the case is, and to apply it to that truth that fits it. If it does not because that is not the truth of the case, that state of case is not made by the evidence, the principle becomes inapplicable. The other principle invoked is that these parties were attempting to arrest these defendants for the sake of a reward. Now, there is a right in the hands of the citizen to
357 make an arrest of another citizen, but before that right can be executed certain conditions 'ust be proven to exist. In the first place, it must be proven that the parties sought to be arrested were guilty of a crime, such as robbery. If the proof shows that prior to that time these two defendants, together with the other party, had been over here and robbed Rigsby, this man who testified here, this witness who was here, that the crime of robbery had been committed, that a crime had been committed such as would give a private citizen the right to arrest the party who had committed it, that is the first proposition that must be proven to exist by the testimony before a private citizen can make an arrest, even for a high crime, that a crime such as he seeks to make the arrest for had been committed by some one. That must be shown as a proposition that is true. Then, that he who is seeking to make the arrest must have reasonable ground to believe that he who he is seeking to arrest was the party who committed that crime. First, a crime must be shown to

have been committed. Then it must be proven that the parties who sought to make the arrest had reasonable ground to believe that the parties they were seeking to arrest were the ones that committed that crime. If that set of facts is proven, any private citizen has a right to make the arrest. That is the law, and it is the law that puts a power in the hands of the citizen for the protection of himself and other citizens, and here it is stated in short form: "Where a felony has been actually committed"—and a robbery is a felony—"a private person acting upon common
358 information, and from such information as amounts to a reasonable and probable ground of suspicion as to justify in apprehending without a warrant the suspected person in order to carry him before a magistrate." First, a crime must be proven. Then the party seeking to make the arrest must have reasonable ground to believe that he who he is seeking to arrest is the party who is guilty of that crime. If so, he can proceed to make the arrest.

Now, a word as to the manner in which that power shall be executed. The law defines the manner that power shall be exercised as clearly as is possible to do so, both by officers and citizens. When a citizen seeks to make an arrest, if it is possible to do so, and the proof shows a crime has been committed, and the reasonable ground to believe that the party he is seeking to arrest is the one guilty of it, if it is possible to do so with due regard to his own safety, he is required to make himself known and his mission known, but he has a right, just as the officer has, to stand upon the principle that he is to seek his own safety and his own protection, and if, when he is seeking to make the arrest, or proceeding to do so, the opportunity to make his mission known is cut off by a deed of actual or threatened violence upon the part of the person he is seeking to arrest, then the fact that he does not make known who he is and what his mission is before the party who cuts him off from the privilege or opportunity of making known his purpose and who he is, does not deprive him of the right, if he is lawfully proceeding upon that mission, to stand upon the defensive and seek his own protection all the time. If he is fired
359 upon or an attempt made to fire on him when he has that purpose in view before he is enabled to make the purpose known, he is thereby cut off from proclaiming his object by an act of violence, or threatened violence, he can stand upon the defensive because he is in the right, he is in the execution of a lawful power, and he who so acts violently, or by such attempted violence, is to blame. When he is seeking to execute that power in that way under the facts I have enunciated, which give him the right to execute the power, those who resist are in the wrong, and if they kill those who are seeking to arrest them, or any one of them, they are guilty of the crime of murder, if the party seeking to make the arrest is proceeding in the way I have named, which is recognized by law as a legal and proper method of seeking to make an arrest.

Now, that is the principle bearing upon that doctrine of the law that has been invoked in this case. You are to see whether that is the state of case that exists here; if so, you are to make the application of the principle of law to that state of case if it is proven.

Now, again, there are two parties charged with this crime. It is necessary, therefore, that I should briefly give you the principles of the law showing how more than one person may commit a crime. I have

already given to you a state of case which shows how more than one person may commit it. When they have agreed to enter upon the commission of a crime which necessarily or probably endangers human life in its commission, whenever they agree to enter upon it, and do enter upon the commission of a crime of that kind, and are present at the place
360 in the execution of the purpose of robbery, they are all present aiding and abetting in the act of killing. The law says that those who participate, those who with their own hands, or with his own hand, does an act which is a crime, that he is responsible for this act. It says further that all those who are present at that place and are participating in that which produces the result, whether the primary purpose was to bring about that result, or the primary object was to do something else which would naturally produce such a result, that they are all responsible. All persons who are present at the time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the perpetration of the crime is a part.

I will read from 6th Criminal Law Mag., page 351, note:

"All persons who are present at the time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the perpetration of the crime is a part. This doctrine of criminal combination is firmly established in our criminal jurisprudence, and the cases furnished numerous illustrations. All are held responsible because the will of each individual contributed to it; each intended that the crime should be perpetrated. Thus in Green *v.* State, two confederated to commit a murder; only one did the killing; the other being present, he was held equally guilty. What, in the sense of the law, is meant by being present, aiding and abetting, is thus stated in Foster's Crown Law: That when the law
361 requires the presence of the accomplice at the perpetration of the fact in order to render him a principal, it does not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what passeth. Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations to prevent a surprise or to favor, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law, present at it, for it was made a common cause with them, each man operating in his station at one and the same instant toward the same common end, and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise."

So that all those who are present at the place where the killing transpired, either in the execution of a direct purpose to kill or in the execution of a purpose to rob, out of the attempt to execute which purpose grows a killing, then they are all present, provided they are there in pursuance of a previous understanding to engage either directly or immediately in the killing or in the act of robbing. Now, that of course implies a previous agreement entered into beforehand. That, as I have told you, is called a conspiracy, an agreement either expressly or tacitly en-

tered into to commit an unlawful act—in this case, to commit the crime of robbery. That, of course, can only be proven as a rule by circum-
362 stances, because when it exists it is something that is confined to those who enter into it. They do not proclaim their purpose upon the house tops; they do not call in a number of jurymen to witness the act that they may pass upon it; they do not make it known to anybody outside of the confederates, and the only way you can ascertain the existence of a wicked undertaking or agreement such as is named a conspiracy by the law, is to drag it to the light of day by circumstances. The association of the parties together; the fact of their participation in a common design; the fact of their being associated together at that place and being there all that time, are facts and circumstances that may be taken into consideration to show this undertaking that was entered into by them. It is not necessary to show it was entered into by so many formal words; it may be tacitly entered into. If a man, with the understanding that another purposes to rob a third, joins him, goes to the place where the attempted robbery is made, and is there for the purpose of aiding him, he agrees to it just as much as though he had entered into an obligation in writing to assist him; it is an agreement in the law. That is the way you are to find it, by the relation that apparently the parties bear to each other, by their being there at the place, by their participating in the common enterprise; by their attempt to participate in the common enterprise. All these things are to be taken into consideration by you for that purpose.

Now, it becomes necessary for the court to remind you of what figure these other crimes that have been proven out in the case. This
363 crime of the robbery of Rigsby may be taken into consideration by you in passing upon the question of the identity of the defendants. It is a competent fact for that purpose. You will remember that the evidence shows that goods were found upon the person of one of these parties who was present at this ferry when the killing of Dansby took place, that were sworn to by Rigsby as having been taken by the three parties, the man Davis or Myers and these two defendants, from his store. That would be evidence that might be taken into consideration with the statements of these colored witnesses who were present at the time, and undertook to point out and identify these defendants; that may be taken into consideration for that purpose. If you believe in the theory that there was an attempt made to arrest upon the part of these parties, and that the attempt wasn't made by these defendants, together with Davis, to commit a robbery upon them, then the fact that the robbery of Rigsby had transpired, and the robbery of Taylor and these other robberies that have been proven before, may be taken into consideration to show that crime had been committed, that would give the citizen the right to make an arrest provided there was reasonable ground to believe, in your judgment, at the time that the parties they were seeking to arrest were the ones that had committed those crimes. They may be taken into consideration for that purpose. You are not to consider these other crimes as make-weight against the defendants alone. That is to say, you are not to convict the defendants because of the commission of these other crimes. They were admitted for the specific purposes that I have named. They are not to influence your minds so as to induce you to more read-
364 ily convict them than you would convict them if the crimes had

not been proven against them. That is the figure they cut. That is the reason they were admitted as testimony before you.

Now, gentlemen, I have given you the principles of law defining this crime of murder. I have given you the law telling you in what cases all who are participants in the commission of some other crime would be held responsible for a murder growing out of that crime. If it is the crime of robbery that was entered upon and they were all participants according to the law I have given to you making parties participants in that crime, in the attempt to consummate it, and while that attempt was being made or the purpose was being executed, Dansby was killed, why the pistol was held in the hands of all and the bullet fired from that pistol or gun, whichever it may be, was the bullet of all, and they are all equally responsible in a case of that kind.

You are to learn from this evidence what the truth of the case is. You are the judges of the credibility of the witnesses. You have positive eyewitnesses to this occurence, persons who were present at the time it transpired, at the time Dansby was shot. You take the testimony of these witnesses, you see whether it is reasonable, whether it is probable in its own and in the light of the other evidence; and as the facts were called out upon examination of the witnesses by defendant's counsel, it is perfectly proper and right when that is the case for you to take into consideration the statements made by these witnesses at or about the time of this
365 occur'ence, either in contradiction of what they testified to upon the stand, or in corroboration of what they stated as witnesses, if they made the same statements made after the occur'ence as to why or how this thing transpired, why these always are proper, having been called out in that way to be taken into consideration by you as corroborative facts of what they said upon the stand. If the converse is true and they made statements that were contradictory in substantial parts as to what the purpose of the parties were, and what they were doing at the time Dansby was killed, why you have a right to take that into consideration as contradicting them.

If you are satisfied from the whole of this testimony beyond a reasonable doubt of the guilt of these defendants of the crime of murder your duty is to convict, and if so you will convict them. You will say that "We, the jury, find the defendants guilty of murder, as charged in the first count of the indictment." If you are not so satisfied, that is, satisfied beyond a reasonable doubt, your duty is to acquit them; and you must be satisfied beyond a reasonable doubt as to all of them before you convict them. If you are not satisfied as to all then your duty would be to acquit the one of whose guilt you are not so satisfied.

Now, a little further as to this rule that says you must weigh the credibility of the evidence. You must pass upon the amount of credit you will attach to every fact. You must do that before you can say whether the facts are sufficient to prove a proposition is established as asserted. That requires you to look at the testimony of each and every witness in its own light and in the light of the other facts. You
366 consider the relation that the witnesses bear to the case and the interest they have in the result of the case. If they are to be affected seriously by the result of the case, by the verdict, as is Stanley in this case, why, then, in passing upon Stanley's evidence you are to consider

that relation that he bears to the case. The highest interest and greatest interest a man has in this life is the interest he has in his own life. He will make a greater sacrifice to preserve that than he will any other right that belongs to him. That is human nature—applicable to all of us. When you are passing upon the testimony of a witness so situated as that his life is being weighed in the balance, if you would do justice you must pass upon his statement in the light of the attitude he bears; in the light of the interest he has to make statements in the case; in the light of the motive that may prompt him or influence him to make statements that would control you or influence your minds in his favor. Now, you weigh his evidence in that way, and you weigh it again in the light of the other evidence in the case. If the other evidence contradicts him, why, it weakens him to the extent that you attach credit to the contradicting facts. If it corroborates what he says, why, it is strengthened, as you may attach credit to the corroborating facts.

You will understand that under the law you are not to draw any inference against the other defendant, Boyd, because he didn't go upon the stand. The law says that you shall not draw any inference against
367 him for that reason. You have a right to draw an inference against a man if the proposition is reasonably established against him, or a presumption is created by other facts. If he has the means reasonably at hand, outside of his own testimony, of refuting that presumption and overthrowing it, and he does not do it, that creates a presumption against him, but he may go upon the stand or not, as he pleases. If he does not choose to go upon the stand you can not draw any inference against him because of that. What inferences you may draw against him must come to your minds from the other testimony in the case and not from his failure to go upon the stand.

Now, gentlemen, you will take all this evidence; you will take these rules of law I have given you, and if, when you have considered the evidence and found what you believe to be the truth of the case, and when you make the application of the principles of law to that truth, and the result produced by that action on your part is a result that fastens upon your minds a well-grounded belief that there is guilt, and guilt of murder here as charged, your duty would be to convict, because in such a case as that you as reasonable men outside of the jury box, as reasonable and just and impartial citizens, looking into the truth or falsity of a charge preferred against another citizen, when the proof carried your minds that far, would believe the charge and you would act upon that belief. That is what is said by the law; to establish the case to such an extent as to satisfy the minds of reasonable men, so that they are convinced beyond a reasonable doubt. That is what is meant by proving a case beyond a reasonable doubt. It does not mean to prove it beyond any doubt; that it must be demonstrated absolutely, so that there is no cavil
368 or conjecture or surmise or no possible doubt that can be arrayed against the conclusion. There is no conclusion that a man ever arrives at that there is not some sort of doubt that may be arrayed against it. But reasonable men pay no attention to these kind of doubts; they are not influenced by them. They must be such doubts as that reasonable men permit their minds to be influenced by them. So, if the case is proven

so that it can be recognized and known by you as being established to that degree of moral certainty that you would be satisfied of the truth of it as citizens; if it is proven so that you can say that it is established beyond a real, substantial doubt, your duty is to convict. If not, if there is a real substantial doubt of guilt in the case, your duty is to regard that doubt and act upon it and acquit upon it. That means a real, substantial doubt of guilt, flowing naturally and reasonably to your minds from the evidence in this case, viewed in the light of the law that may be applicable to the truth of the case, and leaving your minds in that condition that you are not able to say you have an abiding conviction to a moral certainty of the truth of the charge. If your minds are in that condition, then there is no guilt established. If they are carried beyond that by the proof in this case and by the law applicable to the truth of it, then they are in the field of conviction and belief; then the case is established.

I submit the case to you. It is one of great magnitude, great importance. I ask you to do that equal and exact justice that you are
369 commanded by the law of your country, by the mandate of that law, by the oath you have assumed. I feel satisfied in submitting it that you will do that equal and exact justice that ought to be done by honest and impartial citizens, setting in the jury box.

Gentlemen, you have the case.

6:00 p. m.

370 No exception was taken to the charge of the court except in the motion for new trial.

Whereupon the jury retired to deliberate, and afterwards returned into court the following verdict:

"We, the jury, find the defendants, John Boyd and Eugene Standley, guilty of murder as charged in the first count of the within indictment.

(Signed) "R. P. CLAIBORN,
"*Foreman.*"

Whereupon the defendants afterwards filed their respective motions for a new trial, said motion for a new trial and for arrest *f* of judgement of defendant Standley being as follows, to wit:

Comes the said defendant and moves the court to set aside the verdict against him herein and grant him a new trial in this cause for the following reasons and causes, to wit:

1st. Because the court erred in permitting the pardon of Martin Byrd to be read and in receiving said pardon in evidence before the court.

2nd. Because the court erred in allowing the said Martin Byrd, who was shown to have been convicted of larceny, to testify.

3rd. Court erred in admitting on examination in chief the whole conversation of Boyd*m* & Dr. Foil.

4th. Court erred in admitting the declarations to Dr. Foyl and others of Dansby as dying declaration.

5th. Court erred in admitting letters C & D to be read in evidence.

6th. Court erred in admitting Jailor Pape to testify to certain
371 orders for money which he claimed were written by defendant Standley.

7th. The court erred in admitting the testimony of witness Rigsby as to robbery of his store in Arkansas, and also in admitting the details of said robbery. (Byrd did not know it had been done.)

8th. Court erred in admitting the rolls and documents brought by witness Jacob P. Jackson, national secretary.

9th. Court erred in rejecting the testimony of James Magee as to what Richard Butler said when he came and borrowed the gun; that some men were coming to the ferry, or they were looking for some men to come to the ferry, & he wanted a gun, or words of similar import.

10th. Court erred in admitting the testimony of the robbery of John Taylor, and also in admitting proofs of the details of the same, as shown by Standley and John Taylor and others; also as to robbery of Brinson and Hall, and all others' names in the evidence.

11th. Because the verdict was contrary to the evidence, and contrary to law, and contrary to both law and evidence.

12th. The court erred in failing to charge the jury on the subject of manslaughter in connection with the charge as to the right of arrest and in other connections in said charge, and also in failing to give the law of self-defense applicable to the evidence in the case.

Whereupon defendant Standley prays for a new trial in said cause and that the verdict be set aside.

EUGENE STANDLEY,
By GEO. A. GRACE,
His Attorney, by appointment of the court.

372 And said Eugene Standley also files herewith (referring to the above) his motion in arrest of judgment herein, because he says the said circuit court has no jurisdiction in said cause.

Wherefore he prays that said judgment on the verdict be arrested.

(Signed) EUGENE STANDLEY.
By GEO. A. GRACE,
His Attorney, by appointment by the Court.

UNITED STATES
vs.
JOHN BOYD ET AL. } Motion for new trial.

Now comes the defendant in said cause, John Boyd, and moves the court to set aside the verdict heretofore rendered against him and grant him a new trial, and, for grounds of said motion, assigns the following:

1st. Because the verdict is contrary to the law.

2nd. Because the verdict is contrary to the evidence in the case.

3rd. Because the court erred in charging the jury as to the law in the case.

4th. Because the court erred in admitting testimony for the Government and refusing testimony for the defendant.

5th. Because the verdict is not sustained by the law and the evidence.

6th. Because of newly discovered testimony.

7th. Because of other good and sufficient reasons.

(Signed) M. L. MARMON,
Att'y for Boyd.

373 In the circuit court of the United States for the western district of Arkansas.

UNITED STATES
vs.
JOHN BOYD AND EUGENE STANLEY.

PARKER, *J.*:

The first ground for a new trial in the motion of Stanley is that the court erred in permitting the pardon of Martin Byrd to be read and in receiving said pardon in evidence before the court. The pardon of Byrd was only presented to the court prior to its passing upon the question of his competency as a witness. The pardon of Byrd is as follows:

"Benjamin Harrison, President of the United States of America, to all whom these presents may come, greeting: Whereas Martinn Byrd, in the United States district court for the western district of Arkansas, was indicted, charged with larceny, convicted May 10th, 1884, and on the 19th of May, 1884, was sentenced to one year's imprisonment in the Detriot House of Correction, Detriot, Michigan; and whereas the said Martin Byrd has been discharged from said prison, he having served out the term for which sentenced, and was accredited for good behaviour while in prison; and whereas the U. S. district attorney for the western district of Arkansas requests the pardon of said Martin Byrd in order to restore him to competency as a witness in a murder trail to be had July first next in said district court at Little Rock, in which request the judge of
374 said district court unites. Now, therefore be it known that I, Benjamin Harrison, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Martin Byrd a full and unconditional pardon.

"In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

"Done at the city of Washington this 27th day of June, A. D. 1890, and of the Independence of the United States the one hundred and fourteenth.

[The place of the seal.] "BENJAMIN HARRISON.

"By the President:

"JAMES G. BLAINE,
"*Sec. of State.*"

This pardon is evidently competent, because the statement of the reason of the pardon, that is, it is to restore him to competency that he may be used in a murder trial to be held at Little Rock, is evidently a mere clerical error, and if it were not, it matters not, as the pardoning clause is unconditional and absolute, and the reason actuating the President could cut no figure. The pardon is duly executed, being signed by the President, and attested by the Secretary of State and the great seal of the United States. The court takes judicial notice of the seal, as well as the signature of the President and the Secretary of State. The pardon was therefore entirely competent, and its effect was to fully restore Martin

Byrd to competency as a witness. Then there was no error in ad-
375 mitting Byrd as a witness. This disposes of the first and second causes for a new trial.

The third cause is that "the court erred in admitting in examination in chief the whole conversation of Boyd to Dr. Foyle." Stanley was not injured in any way by this conversation, as he is not mentioned. No reference is made to him in the conversation. Boyd himself does not complain of this admission of this conversation. The conversation as affecting Boyd is more valuable for what he did not say than for what he did say. He gave none of the particulars of the shooting. He, in fact, said nothing about it, acting upon a natural impulse if he had been wrongfully shot by Byrd and his party, he would have so asserted as the first thing he said to his friend Dr. Foyle. But the conversation as affecting him is valuable in another aspect of this case. He was talking to the doctor and making a disposition of property that was evidently stolen. He had this in his possession, and as the case was presented to the jury by the counsel for the defendant in their opening statement, upon the theory that Martin Byrd and party were not telling the truth about the occurence at the time of the killing of Dansby, but that the shooting which resulted in the death of Dansby was caused by an attempt by Byrd and party to arrest Stanley, Boyd, and Myers, alias Davis. Then it was material as affecting Boyd from that standpoint of the case to admit his voluntary conversation to Dr. Foyle.

"Fourth. The court erred in admitting the declarations to Dr. Foyle and others of Dansby as dying declarations."

This was called out by Mr. Marmon as attorney for Boyd when exam-
ining Foyle. It was not objected to. I think it very manifest
376 from the whole evidence that Dansby was under apprehension of death, but whether so or not, this is evidence called out by the defendant Boyd, and after having been so called out, the defendants can not complain of it.

"Fifth. The court erred in admitting letters B, C, and D to be read in evidence."

The letters marked B, C, and D, were admissable the one to defendant Stanley's mother on the ground that he fails to assert anything showing innocence of the killing, but it does assert his ability to beat the case on the ground of the want of jurisdiction. If Stanley had not participated in the killing, in writing to his mother he would have so asserted, being governed by a usual principal of human action. The letter is more valuable for its ommission than for its assertion. It is not very strong evidence, yet it is some testimony, and is therefore competent. The other two letters tend to show that Stanley was at the place of the killing of Dansby at the time of such killing. They tend to identify him as one of the parties who participated in the killing. This is a material fact to be proven. True, parties swear to him, and claim to identify him, yet it was in the night time, and they might have been mistaken. Then whatever tends to corroborate their statement is competent. These letters as admissions of Stanley tend to do this.

The above objection to the admissability of the letters was based upon the irrelevancy of their subject-matter.

The 6th cause of objection to the admission of the letters is that the court erred in permitting Jailor Pape to testify to certain orders for money

377 which he claimed were written by defendant Stanley. It was further asserted that the said letters were inadmissable because they were not properly proven to be the handwriting of Stanley. I think Mr. Pape proves the handwriting of the letter marked "D" to be that of Stanley. He swears the letter "D" is in Stanley's handwriting, that he has had occasion to see Stanley's handwriting frequently. Then he alludes to orders coming from the jail purporting to come from Stanley to his office, and upon which he paid money as the money of Stanley. These orders did not go to the jury, but were only used by Mr. Pape as a means of his knowing the handwriting of Stanley. Mr. Pape is the jailor, and, in the ordinary course of his business, writings purporting to be written by Stanley have been submitted to him, and he has acted on them and paid out Stanley's money without complaint from Stanley. This is one method of his acquiring knowledge of Stanley's handwriting. Steven's Digest of the Law of Evidence, pp. 108 and 109. In Rogers against Ritter, 12th Wallace, 322, the Supreme Court of the United States says:

"It is settled everywhere that if a person has seen another write his name but once he can testify, and that he is equally competent if he has personally communicated with him by letter, although he has never seen him write at all; but is the witness incompetent unless he has obtained his knowledge in one or the other of these modes? Clearly not, for in the varied affairs of life there are many modes in which one person can become acquainted with the handwriting of another besides having seen him write, or corresponded with him. There is no good reason for excluding any of these modes for getting information, and if the
378 court on the preliminary examination of the witness can see that he has that degree of knowledge of the party's handwriting which will enable him to judge of its genuine'ss, he should be permitted to give the jury his opinion on the subject."

That is just what Mr. Pape did as to the letter of Stanley to his mother. This letter was then admitted as evidence in the case, as a paper not foreign to it, but relevant to the issues involved. This letter "D" was proved to the satisfaction of the court to be a genuine letter of Stanley's, and it was properly admitted to the jury as being relevant. When this is done this letter may be compared with others whose genuine'ss is sought to be established by experts in handwriting, and their opinion may be taken on the point, and if satisfactory the court may admit letters to the jury, the handwriting of which is in this way proven. This Mr. Williams, a witness, called as a competent expert, using letter "D" as a basis of comparison, was called to do. After hearing his opinion the court admitted to the jury the two other letters. It is sustained in doing this by Mr. Stevens, in his Digest of the Law of Evidence, art. 52, p. 109, by all works on evidence, and by the case of Moore against The United States, 91st U. S., 274. The correctness of this ruling was sustained in the failure of Stanley when he went upon the stand to deny the authenticity of these letters, but, on the contrary, on cross-examination he admitted them to be his letters.

The 7th ground for a new trial is, "that the court erred in admitting the testimony of witness Rigsby, as to the robbery of his store in Arkansas, and also in admitting the details of said robbery, as Byrd did not know it had been done."

379 The evidence of Wrigsby proves two things: First, a robbery of his store by Boyd and Stanley, the two defendants in this case, and another, believed from description to be Davis, alias Myers, and testified by Stanley as being him. Second, that many articles found with these defendants were articles taken by them from Wrigsby. The killing of Dansby was not over 36 hours after the robbery of Wrigsby. This property was proved to be found with defendants at the place of the killing of Dansby, and it was conclusively identified by Wrigsby, besides Wrigsby swears positively to Stanley and Boyd as being two of the men who robbed him of this property. These are facts of the identify of the defendants, corroborative of other facts in the case looking in the same direction. It may be again repeated that the positive identification of the defendants in the case if not strengthened by circumstances might be considered faulty, as it was in the night when they were seen by the Government witnesses, and observations were made by them in the dark and under some degree of excitement. The fact of the possession of the stolen goods of Wrigsby by the defendants, and the further fact that Wrigsby identifies them as two of the men who robbed him of the goods, are circumstances of the strongest corroborative character, and for this reason these were relevant facts in the case.

Mr. Wharton, on criminal evidence, sec. 47, says:

"Proof of a collateral offense may be relevant in order to identify a defendant." If relevant, the evidence is admissable; if admissable it can not be excluded, because it charges the defendant with an extraneous crime. Wharton's Crim. Ev., sec. 32.

380 Defendant Stanley further complains that the witness Wrigsby was permitted to give the robbery of his store in all its circumstantiality. It would be difficult to see how this could be avoided, for it is certainly a means of getting at how he knew the property found with defendants Boyd and Stanley at the time of the killing. The fact that his property was found with them amounted to nothing as a means of identity unless he could identify them as the men who took this property. To give the means of identification and the opportunity he had necessarily required that he should tell all about the robbery. No doubt his giving the details showed clearly the commission of an extraneous crime. Suppose the act of robbing the store had been an honest, commendable act, and had been a relevant fact to establish identity; does it become any less relevant because it shows the commission of another crime, or any less competent because the defendants created a relevant fact against them by committing the crime of robbery? The Government is not to be deprived of relevant and competent evidence on a material issue because the fact was a criminal fact instead of an innocent one. It is claimed in argument that defendants never made any issue on their being at the place of the killing. Whether they did or not it was incumbent upon the Government to show beyond a reasonable doubt that defendants were then and there at the place of the crime, and it was proper for it to offer all competent facts to show this. Although the defendants' counsel in his statement of their case to the jury said nothing directly or expressly about their not being present, and although they may have relied on some other defense, if the Government had not proven beyond

a reasonable doubt they were present its failure would have
381 been a good defense, available to the defendants. The defendants, in their statement of the case to the jury, asserted that Dansby and party brought on the shooting in an attempt to arrest Stanley, Boyd, and Davis, alias Myers. The Government, in its statement of the case by the district attorney, asserted the shooting occurred because of an attempt by defendants and Davis to rob Dansby and others. In the trial of the case the opening statement of counsel is notice to the court, jury, and opposite side of the theory upon which the side for which the statement is made will proceed, and that side is entitled to offer any facts which may tend to sustain that theory, or refute the theory of the opposite side, and although the party may not in the end succeed in making proof full enough to sustain his theory, or refute the opposite theory, he is still to be permitted to do his best in that direction, although he may in the end, in the judgment of the jury, fail to sustain his theory. The defendants had a right to offer any and all proof which tended to overturn the theory of the Government, that is, that the killing was done in an attempt at robbery, and, in addition, to offer any and all facts which tended to show Dansby was killed because of an attempt to arrest defendants and Davis, alias Myers, for crime, and to get the reward offered. If they in good faith advance a theory of this kind they had a right to offer to the jury any facts that might look in that direction. They may be deceived as to their ability to make the proof full, and as they were not capable of introducing their whole case at once they could offer all competent facts which tended to prove their case or any part of it. The same rule applies to the Government. It, by its statement, said
382 to the jury that Dansby was killed by defendants in an attempt to rob him and others with him at the time. It had a right to proceed on this theory or it had a right to show or make an effort to show, that even if the statement of the case of defendants was proved they were then guilty of murder. If the counsel for the Government was in good faith in the belief that he would be able by the proof to show this, the fact that in the end he may have failed to make full proof on this point would not make the proof offered in that direction irrelevant or incompetent. He may think he has made a case on this theory, yet the jury may think otherwise. If true that John Dansby and Martin Byrd and others attempted to arrest defendants and Davis because of felonious crimes committed by them, and proceeded about it in the proper way, the killing of John Dansby by defendants in resisting such an arrest would be murder, provided the crime or crimes they were seeking to arrest defendants for were felonious, and they had actually been committed, and that there was good reason to believe defendants guilty of such crime or crimes. In such a case they as citizens without warrant could arrest defendants. The Law of Arrest by Hawley, p. 44; Holly against Micks, 3rd Wend., 350; Barnes vs. Eden, 40th N. Y., 463; State vs. Bryant, 65th N. C., 327; Wrexford vs. Smith, 2nd Root, 171; Long vs. State, 12th Geo., 293; Brooks vs. Com., 61st Pa. State, 352; State vs. Minry (Kansas case), 10th Crim. Law Mag., p. 28. Mr. Cooley in a note to his Blackstone, vol. 4, 292, says:

"Where a felony has been actually committed a private person, acting with good intention and upon such information as amounts to a
383 reasonable and probable ground of suspicion, is justified in appre-

hending without a warrant the suspected person in order to carry him before a magistrate."

The same principal is stated in 3rd Greenleaf, sec. 123, note 1, and in Bishop's Crim. Proceedure, sec. 168, and in note to Holley vs. Micks, 20th American Decisions, 702, and in Wait's Actions and Defenses, vol. 3, p. 311. The first essential fact to establish a condition that would give Dansby, Byrd, and others the right to make an arrest of defendants was to prove that felonious crimes had been committed. The second necessary fact was to show that there was good reason to believe that defendants had committed these crimes. In such case private citizens could arrest them. The proof that defendants committed robberies of different persons would show that felonous crimes had been committed, and also that there was not only good reason to believe that defendants were guilty of such crimes but that there was proof beyond a reasonable doubt of it. The only remaining proposition would be whether Dansby, Byrd, and others acted upon this condition, and were for such reasons seeking at the time of the killing to arrest defendants, or whether defendants attempted to rob Dansby and the others. As the case was presented by the defendants' counsel, with the first proposition as a reason for the action of Dansby, Byrd, and the others, I think the Government had a right to offer evidence to show if it could that even upon defendants' theory they would be guilty of murder. As to whether this evidence was sufficient to show that state of case was to be left to the jury as the sole judges of the weight of the evidence.

384 The robbery of Wrigsby, with all of its details, for the reasons above given was clearly admissable as a means of identity of defendants with the persons who killed Dansby. The status of the case caused by the statement of it by the Government and the defendants' counsel, in my judgment, made competent the fact showing the robbing of Taylor by Stanley and Davis. Can it be claimed that Dansby, Byrd, and others sought to arrest defendants and that the Government was not permitted to show why they sought to arrest them? Even if it was a case where the arrest was illegal, the parties seeking to make it might show why they sought to make it. According to Stanley's statement while upon the stand as a witness, Dansby and the other colored men were seeking to capture him and his companions for the robbery of John Taylor, of which robbery he admits his guilt. This statement would clearly make the evidence of this robbery competent and relevant, and although it might not have been competent at the time it was admitted, if it become so at any stage of the case because of a change in the status of the case, or because of any evidence in it that might be subsequently offered, that would cure any error that might have been previously committed in the admission of the testimony.

Again, Mr. Stanley, in his evidence while on the stand as a witness, attempted to explain away the attempt at robbery of Dansby and others, by asserting that he and Boyd had participated in the robbery of Wrigsby, and for that reason they did not want to cross at the ferry if they could avoid it, evidently for fear of discovery, and as they did not want to cross at the ferry, they could not have gone there for the purpose of robbing Dansby and others. He had a right to give this as a compe-

385 tent fact, and after he gives the fact of the robbery of Wrigsby, with all of its details, as being participated in by himself and Boyd

and offers it as a reason why he didn't go to the ferry for the purpose of robbery, he certainly makes the admission of that robbery a competent fact in the case. By looking at the evidence of Stanley on the stand as a witness, we find that he was asked by his counsel if he had not been convicted at this term of court of robbery and if there were not two other indictments pending against him for the same crime. He certainly can not complain of the admission of these facts when it was stated by himself in answer to the interrogatories of his own counsel. The Brinston robbery was competent, as the defendant Stanley was in effect asked by his own counsel when a witness if he was not confined in jail for it, and the defendant as a witness could be asked this. (Sec. 474, Wharton's Crim. Ev.) Then in his own behalf he could deny the robbery, as he did do. His denial of it was a material fact, and being material and not collateral to the issue, he could be contradicted upon it. (Sec. 484, Wharton's Crim. Ev.)

Then I do not think there was any error in admitting the evidence of these different robberies. In judging of whether evidence is incompetent courts are to take into consideration the condition of the case at the time of its admission, or such condition as may exist at any time during the trial as will render the evidence competent. The eighth cause for a new trial is that the court erred in admitting the rolls and documents brought by the witness Jacob P. Jackson, national secretary of the Choc-
386 taw Nation. What must be proven to give the court jurisdiction and why it must be proven is fully explained in the charge of the court in this case. The rolls were made according to the laws of the Choctaw Nation. The proof showed Mr. Jackson to be secretary of the nation and the custodian of the rolls. They were brought from the national secretary's office; they were the original rolls and the very best evidence of how John Dansby registered, and what his status was after his registration; that is, whether he registered to become a citizen of the Choctaw Nation or to receive the hundred dollars provided by law to be given to the Choctaw colored men who did not desire to become citizens of the nation. They proved that he chose to receive the hundred dollars and remain a non-citizen; there was manifestly no error on this point.

Ninth cause for a new trial—the court erred in rejecting the testimony of James MaGee as to what Richard Butler said when he came and borrowed the gun; that some men were coming to the ferry or they were looking for some men to come to the ferry, and he wanted a gun, or words of similar import. This was clearly hearsay. Richard Butler was here as a witness for defendant and was not called by them. If the fact was competent at all, he was the proper one to prove it. As offered, it was hearsay. The best evidence of a fact available must be produced.

The tenth cause for a new trial is, the court in admitting the testimony of the robbery of John Taylor, and also in admitting proofs of the details of the same as shown by Stanley, John Taylor, and others; also as to the robbery of Brinson and Hall, and all others named in the evi-
387 dence. This point has already been noticed, except in relation to the robbery of Hall, and it may be remarked that no evidence went to the jury in relation to that robbery; that Stanly was asked about it by his own counsel; that is, he was asked in regard to the indictment that was pending against him in that case. He admitted the indictment

but denied the robbery, and that left it as not being a fact in the case. He certainly can not complain of his own examination by his own counsel.

The eleventh cause for a new trial is that the verdict was contrary to the evidence and contrary to law and contrary to both the law and the evidence. This is general in its character, and need not be noticed any further than to remark that, in my judgment, the evidence and the law fully sustain the verdict.

The twelfth cause for a new trial is that the court erred in failing to charge the jury on the subject of manslaughter in connection with the charge as to the right of arrest, and in other connections; and also in failing to give the law of self-defense applicable to the evidence in the case. The case did not proceed, upon the part of the defendant, upon the theory of the existence of either; neither one was ever alluded to by counsel for the defendant in their opening statement of the case or in their argument of it; and although this may have been an omission or oversight on the part of the court, yet it is one which from the whole of this evidence could work no injury to the defendants, as they are entitled to no verdict other than the one supported by the facts and sustained by the law, and I believe the verdict in this case has the support of both. The motion for a new trial in the case of Boyd is general in its character, and it is understood that he relies upon the same causes as those set out in detail in the motion of Stanley. It therefore requires no further notice than what has been given to the Stanley motion.

388 The motions for a new trial will be overruled, as well as the motion of Stanley in arrest of judgment.

389 Each and all of said motions were by the court overruled, and the defendant at the time excepted.

Whereupon the court pronounced sentence of death upon each of said defendants, which sentence as to defendant Standley is as follows, to wit:

390 In the circuit court of the United States for the western district of Arkansas, November term, 1891.

MONDAY MORNING, 9 o'clock, *January*, 1891.

Court met pursuant to adjournment.

Present: The honorable I. C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES *vs.* EUGENE STANDLEY. } Indictment for murder, No. ——.

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendant, Eugene Standley, was brought to the bar of the court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this cause, on the 29 day of October, 1890, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said marshal of

the district aforesaid cause the said Eugene Standley to be taken hence, and him, the said Eugene Standley, safely and securely keep, from the date hereof, until Tuesday, 21st day of April, A. D. 1891, and on that day and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Eugene Standley to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Tuesday, the said day of April, in the year of our Lord one thousand eight hundred and ninety-one, cause the said Eugene Standley to be hanged by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

391 And the sentence of Defendant Boyd is as follows, to wit:

In the circuit court of the United States for the western district of Arkansas, November term, 1890.

MONDAY MORNING, 9 o'clock, *January* 12, 1891.

Court met pursuant to adjournment.

Present, the honorable I. C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES *vs.* JOHN BOYD. } Indictment for murder, No. 9.

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendent, John Boyd, was brought to the bar of the court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this cause, on the 29th day of October, 1890, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said marshal of the district aforesaid, cause the said John Boyd to be taken hence, and him, the said John Boyd, safely and securely keep, from the date hereof, until Tuesday, the 21 day of April, A. D. 1891, and on that day and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said John Boyd to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Tuesday, the said day

of April, in the year of our Lord one thousand, eight hundred and ninety-one, cause the said John Boyd to be hanged by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

392 To which judgment and sentence of the court the defendants at the time excepted, and were granted until the 9th of February, 1891, to file a bill of exceptions, which the defendants here tender and pray that the same may be signed, sealed, and made a part of the record in this cause; which is accordingly done.

Signed by me this 7th day of February, A. D. 1891.

I. C. PARKER,
U. S. District Judge holding the Circuit Court in the Western Dist. of Arkansas, at the time of the trial of Eugene Standley and John Boyd.

393 UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States for the western district of Arkansas, hereby certify that the foregoing is a true and correct transcript of the record in the case of the United States versus John Boyd and Eugene Standley, ali's Eugene Stanton, indicted for murder, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Fort Smith, in said district, this 21st day of February, A. D. 1891.

[SEAL.]

STEPHEN WHEELER,
U. S. Circuit Clerk for Western Dist. of Arkansas.

(Indorsed on cover:) No. 1048. John Boyd and Eugene Standley, alias Eugene Stanton, plaintiffs in error, *vs.* the United States, 14506. W. Arkansas C. C. U. S. Filed February 28, 1891.